

The Mined-Land Conservation and Reclamation Board was abolished on July 1, 1988. Powers, duties and functions under the Kansas Corporation Commission were transferred to the Dept. of Health and Environment. See L. 1988, Ch. 192, Sec. 1.

Amended Permanent Regulations November 2005

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 2 - MEANING OF TERMS

47-2-75. Definitions; adoption by reference. The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation: (a) The section titled definitions, 30 CFR 700.5, except for the following, shall be altered as follows:

(1) “Regulatory authority” and “state regulatory authority” shall ~~be defined~~ have the meaning specified in K.A.R. 47-2-53.

(2) “Surface coal mining operations” shall ~~be defined~~ have the meaning specified in K.S.A. 49-403 ~~(f)~~, and amendments thereto.

(3) “Surface coal mining and reclamation operations” shall ~~be defined~~ have the meaning specified in K.S.A. 49-403 ~~(g)~~, and amendments thereto.

(4) The following text shall be deleted from the definition of “anthracite”: “Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, ~~1100 L St., N.W.~~, 800 North Capitol Street, N.W., suite 700, Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal

Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.”

(5) “Regulatory program” shall ~~be defined~~ have the meaning specified in K.A.R. 47-2-53a.

(6) “Director” means the director, office of surface mining reclamation and enforcement, in the following instances:

- (A) K.A.R. 47-3-42 (a)(~~36~~)(39), adopting by reference 30 CFR 785.13;
- (B) K.A.R. 47-14-7 (a)(1), adopting by reference 30 CFR 705.4 (a);
- (C) K.A.R. 47-14-7 (a)(3), adopting by reference 30 CFR 705.11 (c) and (d);
- (D) K.A.R. 47-14-7 (a)(4), adopting by reference 30 CFR 705.13;
- (E) K.A.R. 47-14-7 (a)(5), adopting by reference 30 CFR 705.15;
- (F) K.A.R. 47-14-7 (a)(8), adopting by reference 30 CFR 705.19 (a); and
- (G) K.A.R. 47-14-7 (a)(9), adopting by reference 30 CFR 705.21. All other references to “the director” shall be replaced by “the secretary of the Kansas department of health and environment.”

(7) “Department” means the Kansas department of health and environment.

(8) “Secretary” means secretary of the Kansas department of health and environment.

(9) “[T]his chapter” shall be replaced by “these regulations.”

(10) “[A]ct” shall be replaced by “state act.”

(b) The section titled definitions, 30 CFR 701.5, except for the following, shall be altered as follows:

(1) “Imminent danger to the health and safety of the public” shall ~~be defined~~ have the

meaning specified in K.S.A. 49-403 (~~m~~), and amendments thereto.

(2) “Operator” shall ~~be defined~~ have the meaning specified in K.S.A. 49-403 (~~e~~), and amendments thereto.

(3) “Permit” shall ~~be defined~~ have the meaning specified in K.S.A. 49-403 (~~n~~), and amendments thereto.

(4) “Permit area” shall ~~be defined~~ have the meaning specified in K.S.A. 49-403 (~~o~~), and amendments thereto.

(5) “Significant, imminent environmental harm to land, air or water resources” shall ~~be defined~~ have the meaning specified in K.A.R. 47-2-58.

(6) The following federal definitions shall be deleted ~~entirely~~:

(A) “Agricultural activities ~~or farming~~”;

(B) “alluvial valley floors”;

(C) “arid and semiarid area”;

(D) “essential hydrologic functions”;

(E) “farming”;

(F) “flood irrigation”;

~~(F)~~ (G) “materially damage the quality and quantity of water”;

~~(G)~~ “rangeland”;

(H) “special bituminous coal mines”;

(I) “subirrigation”;

(J) “undeveloped rangeland”; and

(K) “upland areas.”

(7) In the definition of “[C]umulative impact area,” the following text shall be deleted:
“and (d) all operations required to meet diligent development requirements for leased Federal coal
for which there is actual mine development information available.” The word “and” shall be
placed immediately before subsection (c).

(8) “30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133” shall be
replaced by “K.A.R. 47-9-1 (c)(12), (13), and (45) or K.A.R. 47-9-1 (d)(12), (13), and (43).”

(9) “30 CFR parts 816 and 817” shall be replaced by “K.A.R. 47-9-1 (c) and (d).”

(10) “[S]ubchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(11) “§§ 816.102(d) and 817.102(d) of this chapter” shall be replaced by “K.A.R. 47-9-1
(c)(35) and (d)(33).”

(12) “§§ 784.20 and 817.121 of this chapter” and “§§ 784.20 and 817.121” shall be
replaced by “K.A.R. 47-10-1 (a)(2)(K) and K.A.R. 47-9-1 (d)(39).”

(13) “[P]arts 773, 774, and 778” shall be replaced by “articles 3 and 6 of these regulations
and K.A.R. 47-3-42 (a)(1) through (11).”

(14) “30 CFR chapter VII” shall be replaced by “article 1 of these regulations.”

(15) “30 CFR 785.17 (c)(1)” shall be replaced by “K.A.R. 47-3-42 (a)(40).”

(16) “[S]ubchapter K” shall be replaced by “article 9 of these regulations.”

(17) “§761.5 of this chapter ” shall be replaced by “K.A.R. 47-12-4 (a)(1).”

(18) “§773.13 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(53).”

(19) “[S]ections 507 and 510(c) of the Act” shall be replaced by “K.S.A. 49-406 and
K.S.A. 49-407 (b), and amendments thereto.”

(20) “§ 843.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(9).”

- (21) “§ 843.11 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(8).”
- (22) “[P]art 845 or 846 of this chapter” and “parts 724 and 846 of this chapter” shall be replaced by “K.A.R. 47-5-5a.”
- (23) “§800.50 of this chapter” and “§800.50 (d)(1) of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(14).”
- (24) “§800.11(e) of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(3).”
- (25) “[S]ection 502” shall be replaced by “K.S.A. 49-406, and amendments thereto.”
- (26) “[S]ection 521 of the Act” shall be replaced by “K.S.A. 49-405, and amendments thereto.”
- (27) “[S]ection 518 (b) or section 703 of the Act” shall be replaced by “K.S.A. 49-405c or K.S.A. 75-2973, and amendments thereto.”
- (28) In the definition of “permittee,” the phrase “by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program,” shall be deleted. In the definition of “permittee,” “Director” shall mean the director, office of surface mining reclamation and enforcement.
- (29) In the definitions of “federal program” and “state program” located in this subsection, “Secretary” shall mean the director, office of surface mining reclamation and enforcement. In the definition of “prime farmland” located in this subsection, the term “Secretary” shall mean the secretary of agriculture. All other references to “Secretary” shall mean the secretary of the Kansas department of health and environment. In the definition of “federal program,” “Director” shall mean the director, office of surface mining reclamation and enforcement.

(30) The phrase “and § 843.21 of this chapter” shall be deleted.

(31) “Section 404 or under section 402(g)(4) of the Act” shall be replaced by “K.S.A. 49-428, and amendments thereto.”

(32) In the definitions of “Applicant/Violator System or AVS,” “Federal Program,” “State Program,” and the portion of the definition for “Permittee” that states “section 523 of the Act,” the word “Act” shall mean the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). All other references to “Act” shall mean the “state act.”

(33) The text “(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections” shall be replaced with the following text: “(1) A failure to comply with a condition of a permit issued by the Kansas department of health and environment under K.S.A. 49-405 and K.S.A. 49-406, and amendments thereto, or the regulations implementing those sections.”

(34) The definition of “performance bond” shall be replaced with the following: “Performance bond means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the state act, these regulations, a state program, and the requirements of the permit and reclamation plan.”

(35) “[T]his chapter” shall be replaced by “these regulations.”

(36) “[A]ct” shall be replaced by “state act.”

(c) The section titled definitions, 30 CFR 705.5, ~~except for the following~~, shall be altered as follows:

(1) “Employee” shall ~~be defined~~ have the meaning specified in K.A.R. 47-2-21.

(2) "State regulatory authority" shall ~~be defined~~ have the meaning specified in K.A.R. 47-2-53.

(3) "[A]ct" shall be replaced by "state act."

~~(d) Definitions, 30 CFR 773.5.~~

~~(e) Definitions, 30 CFR 846.5, except for the following.~~

~~(1) "Federal program" shall be replaced by "state program."~~

~~(2) "Section 521 of the act" shall be replaced by "K.S.A. 49-405, and amendments thereto."~~

~~(3) "Act" shall be replaced by "state act."~~

~~(4) "Secretary" shall be replaced by "secretary of the Kansas department of health and environment."~~

~~(5) "Section 518(b)" shall be replaced by "K.S.A. 49-416a, and amendments thereto."~~

~~(6) "Section 703 of the act" shall be replaced by "K.S.A. 75-2973, and amendments thereto."~~

~~(7) "Federal lands program. Federal enforcement pursuant to section 502 of the act and federal enforcement of a state program pursuant to section 521 of the act" shall be deleted.~~

(Authorized by K.S.A. 49-404, and K.S.A. 49-405, and K.S.A. 49-408; implementing K.S.A. ~~49-401 et seq.~~ 49-405 and K.S.A. 49-408; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 3 - APPLICATION FOR MINING PERMIT

47-3-2. Application for mining permit; adoption by reference. (a) Each permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. The outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following federal regulations as in effect on July 1, ~~1995~~ 2001 are adopted by reference, except as otherwise indicated in ~~these regulations~~ this regulation:

- (1) Format and contents, 30 CFR 777.11;
- (2) reporting of technical data, 30 CFR 777.13;
- (3) maps and plans; general requirements, 30 CFR 777.14. The phrase "in accordance with section 710.12 of this chapter" shall be deleted; and
- (4) completeness, 30 CFR 777.15.

(c) The following ~~terms~~ phrases shall be replaced with the ~~indicated terms~~ phrases specified in this subsection wherever ~~they~~ the phrases appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-3-2~~ in this regulation:

- (1) "This chapter" ~~or~~ and "this subchapter" shall be replaced by "these regulations."
- (2) "[P]arts 778, 779, and 780 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(1) to (35), inclusive through (38)."

(3) "[P]art 785 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(~~36~~)(39) to (41), inclusive through (45)."

(4) "[P]arts 778, 783, and 784 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(1) to (8), inclusive, through (11) and K.A.R. 47-10-1 (a)(1) and (2) " and "K.A.R. 47-10-1."
(Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 3 - APPLICATION FOR MINING PERMIT

47-3-42. Application for mining permit; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except ~~as otherwise indicated in these regulations~~ for the additions and deletions specified:

- (1) Certifying and updating existing permit application information, 30 CFR 778.9;
- (2) providing applicant, operator, and ownership and control information, 30 CFR 778.11;
- (3) providing permit history information, 30 CFR 778.12;
- (4) ~~Identification of interests~~ providing property interest information, 30 CFR 778.13;
- (~~2~~) (5) providing violation information, 30 CFR 778.14;
- (~~3~~) (6) right-of-entry information, 30 CFR 778.15;
- (~~4~~) (7) status of unsuitability claims, 30 CFR 778.16, except that the phrase “parts 762, 764, and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;
- (~~5~~) (8) permit term, 30 CFR 778.17 (a);
- (~~6~~) (9) insurance, 30 CFR 778.18;
- (~~7~~) (10) proof of publication, 30 CFR 778.21;
- (~~8~~) (11) facilities or structures used in common, 30 CFR 778.22;
- (~~9~~) (12) responsibilities, 30 CFR 779.4. The phrase “this part” shall be replaced by “K.A.R. 47-3-42 (a)(12) to through (19), inclusive”;

- ~~(10)~~ (13) general requirements, 30 CFR 779.11;
- ~~(11)~~ (14) general environmental resources information, 30 CFR 779.12;
- ~~(12)~~ (15) climatological information, 30 CFR 779.18;
- ~~(13)~~ (16) vegetation information, 30 CFR 779.19;
- ~~(14)~~ (17) soil resources information, 30 CFR 779.21;
- ~~(15)~~ (18) maps: general requirements, 30 CFR 779.24;
- ~~(16)~~ (19) cross sections, maps, and plans, 30 CFR 779.25;
- ~~(17)~~ (20) responsibilities, 30 CFR 780.4. The phrase “this part” shall be replaced by
“K.A.R. 47-3-42 (a)~~(17)~~(20) ~~to (35)~~ through (38), inclusive”;
- ~~(18)~~ (21) operation plan: general requirements, 30 CFR 780.11;
- ~~(19)~~ (22) operation plan: existing structures, 30 CFR 780.12;
- ~~(20)~~ (23) operation plan: blasting, 30 CFR 780.13;
- ~~(21)~~ (24) operation plan: maps and plans, 30 CFR 780.14;
- ~~(22)~~ (25) air pollution control plan, 30 CFR 780.15;
- ~~(23)~~ (26) fish and wildlife information, 30 CFR 780.16;
- ~~(24)~~ (27) reclamation plan: general requirements, 30 CFR 780.18;
- ~~(25)~~ (28) hydrologic information, 30 CFR 780.21;
- ~~(26)~~ (29) geologic information, 30 CFR 780.22;
- ~~(27)~~ (30) reclamation plan: land uses information, 30 CFR 780.23;

~~(28)~~ (31) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 780.25;

~~(29)~~ (32) reclamation plan: surface mining near underground mining, 30 CFR 780.27;

~~(30)~~ (33) diversions, 30 CFR 780.29;

~~(31)~~ (34) protection of public parks and historic places, 30 CFR 780.31;

~~(32)~~ (35) relocation or use of public roads, 30 CFR 780.33;

~~(33)~~ (36) disposal of excess spoil, 30 CFR 780.35;

~~(34)~~ (37) road systems, 30 CFR 780.37;

~~(35)~~ (38) support facilities, 30 CFR 780.38;

~~(36)~~ (39) experimental practices mining, 30 CFR 785.13, except that the word "Act" shall be replaced by "state act";

~~(37)~~ (40) prime farmland, 30 CFR 785.17. The last sentence in 30 CFR 785.17 (c)(1)(i) shall be deleted;

~~(38)~~ (41) variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, 30 CFR 785.18, except that in subsections (b)(3) and (7), the word "Act" shall be replaced by "state act";

~~(39)~~ (42) augering, 30 CFR 785.20;

~~(40)~~ (43) coal preparation plants not located within the permit area of a mine, 30 CFR 785.21, except that subsections (d) and (e) shall be deleted;

~~(41)~~ (44) in situ processing activities, 30 CFR 785.22;

(45) lands eligible for remining, 30 CFR 785.25;

~~(42)~~ (46) public participation in permit processing, 30 CFR ~~773.13~~ 773.6. The phrase “developed in accordance with section 503 (a)(6) or section 504 (h) of the Act, or §773.5” in 30 CFR ~~773.13~~ 773.6 (a)(3)(ii) and the sentence “The requirements of section 5 of the administrative procedures act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference.” in 30 CFR 773.6 (c)(2)(iv) shall be deleted;

~~(43)~~ (47) review of permit applications, 30 CFR ~~773.15~~. 773.7 ~~Only in paragraph 30 CFR 773.15(b) shall the term “act” mean “surface mining control and reclamation act of 1977 (Pub. L. 95-87)” and amendments thereto. All other references to the term “act” in 30 CFR 773.15 shall be replaced with “state act”;~~

(48) general provisions for review of permit application information and entry of information into AVS, 30 CFR 773.8;

(49) review of applicant, operator, and ownership and control information, 30 CFR 773.9;

(50) review of permit history, 30 CFR 773.10;

(51) review of compliance history, 30 CFR 773.11, except that the word “Act” shall be replaced by “state act”;

(52) permit eligibility determination, 30 CFR 773.12;

(53) unanticipated events or conditions at remining sites, 30 CFR 773.13;

(54) eligibility for provisionally issued permits, 30 CFR 773.14;

(55) written findings for permit application approval, 30 CFR 773.15. Subsection (d) shall be deleted, and in subsections (a) and (b), the word “Act” shall be replaced by “state act.”

The phrases “parts 764 and 769 of this chapter” and “parts 762 and 764 or 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;

(56) performance bond submittal, 30 CFR 773.16;

~~(44)~~ (57) permit issuance and right of renewal, 30 CFR 773.19. The phrase clause “unless the requirements of 778.17 of this chapter are met” shall be deleted;

~~(45) improvidently issued permits: general procedure, 30 CFR 773.20, except in subsection (c)(2) “43 CFR 4.1370 through 4.1377, where osm is the regulatory authority, or under the state program equivalent, where a state is the regulatory authority” shall be replaced by “K.A.R. 47-4-14a”;~~

~~(46)~~ (58) improvidently issued permits: rescission procedures initial review and findings requirements for improvidently issued permits, 30 CFR 773.21, except that in subsection (c)(2), the phrase “and on the avs office internet home page (internet address: <http://www.avs.osmre.gov>)” shall be deleted;

~~(47)~~ (59) verification of ownership or control application information notice requirements for improvidently issued permits, 30 CFR 773.22;

~~(48)~~ (60) review of ownership or control and violation information suspension or rescission requirements for improvidently issued permits, 30 CFR 773.23;

~~(49) procedures for challenging ownership or control links shown in avs, 30 CFR 773.24; except as otherwise indicated in this subsection:~~

~~(A) Subsection (a)(2) shall be deleted.~~

~~(B) In subsection (b) “federal violation” shall be replaced by “state violation.”~~

(C) In subsection (b) "~~paragraphs (a)(1) or (a)(2)~~" shall be replaced by "~~paragraphs (a)(1) or (a)(3).~~"

(D) In subsection (b) "~~osm, addressed to the chief of the avs office, office of surface mining reclamation and enforcement, U.S. department of the interior, Washington, D.C. 20240~~" shall be replaced by "~~Kansas department of health and environment, addressed to the chief of the surface mining section, Kansas department of health and environment, 4033 Parkview Dr., Frontenac, Kansas, 66713.~~"

(E) In subsection (b), (c), and (d), "~~osm~~" shall be replaced by "~~Kansas department of health and environment.~~"

(F) In subsection (d)(2)(i) "~~Rule 4 of the federal rules of civil procedure~~" shall be replaced by "~~K.A.R. 47-4-14a.~~"

(G) In subsection (d)(2)(ii) "~~the department of the interior's office of hearings and appeals~~" shall be replaced by "~~the secretary of the Kansas department of health and environment in accordance with K.S.A. 49-416a and K.A.R. 47-4-14a(8), and amendments thereto.~~"

~~(50) standards for challenging ownership or control links and the status of violations, 30 CFR 773.25, except as otherwise indicated in this subsection:~~

~~(A) In subsection (a) "Part 775" shall be replaced by "K.A.R. 47-4-14a."~~

~~(B) Subsection (b) shall be replaced in its entirety by the following:~~

~~"(b) The secretary of the Kansas department of health and environment or the secretary's designee shall have the authority to perform the following:~~

~~(1) make decisions with respect to ownership or control relationships contained within~~

coal mining applications in the state of Kansas;

~~(2) make decisions with respect to the ownership or control relationships of a coal mining permit issued in the state of Kansas;~~

~~(3) make decisions with respect to the ownership or control relationship of a coal mining violation issued in the state of Kansas; and~~

~~(4) make decisions concerning the status of coal mining violations issued in the state of Kansas, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of §773.15(b)(1) of this part."~~

~~(C) In subsection (c) "responsible agency" shall be replaced by "Kansas department of health and environment."~~

~~(D) In subsection (d) "a state regulatory authority or other state agency" shall be replaced by "the Kansas department of health and environment."~~

~~(E) In subsection (d) "by an administrative or judicial tribunal reviewing such determination" shall be replaced by "of an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination";~~

(61) who may challenge ownership or control listings and findings, 30 CFR 773.25;

(62) how to challenge an ownership or control listing or finding, 30 CFR 773.26, except that in subsection (a), the phrases "as identified in the following table" and "the table" shall be deleted. The word "Act" shall be replaced by "state act";

(63) burden of proof for ownership or control challenges, 30 CFR 773.27;

(64) written agency decision on challenges to ownership or control listings or findings,
30 CFR 773.28; and

~~(54)~~ (65) applicability, 30 CFR 701.11 ~~subsection~~ subsections (d) and (e) only;
Subsections (a), (b), (c), ~~(d)~~ and (f) shall be deleted, and the word “Act” shall be replaced by
“state act.”; and

~~(52) regulatory coordination with requirements under other laws, 30 CFR 773.12.~~

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~
phrases and citations specified in this subsection wherever the phrases and citations appear in the
text of the federal regulations adopted by reference ~~under K.A.R. 47-3-42~~ in this regulation.

(1) “[S]ubchapter K (Permanent Program Standards) of this chapter,” “subchapter K” ~~or~~
and “subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(2) “[T]his chapter,” “this subchapter,” “this part,” ~~or~~ and “subchapter G of this chapter”
shall be replaced by “these regulations.”

(3) “Act” shall be replaced by “state act.”

(4) “[S]ection 515 of the Act,” “section 515 (b) of the Act,” ~~or~~ “section 515 (b)(22) of the
Act,” and “sections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 ~~to~~
through 49-413, inclusive, and 49-429, and amendments thereto.”

(5) “[S]ubchapter J of this chapter,” “subchapter J,” ~~or~~ and “part 800 of this chapter” shall
be replaced by “article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

(6) ~~“Section 502”~~ and “[S]ection 508 of the Act” shall be replaced by “K.S.A. 49-406,
and amendments thereto.”

(7) "[S]ection 515(b)(16) of the Act" ~~or "section 516"~~ shall be replaced by "K.S.A. 49-429, and amendments thereto."

(8) "[S]ubchapter R of this chapter" shall be replaced by "the office."

(9) "[S]ubchapter B (Interim Program Standards) of this chapter" and "subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(10) "[P]art 775 of this chapter" and "part 775 of this subchapter" shall be replaced by "K.S.A. 49-407 (d), 49-416a, and 49-422a, and amendments thereto, and article 4 of ~~chapter 47 of the Kansas administrative~~ these regulations."

(11) ~~"Parts 762, 764, and 769 of this chapter" and "parts 764 and 769 of this chapter"~~ shall be replaced by ~~"K.A.R. 47-12-4."~~

~~(12)~~ "[P]art 816" ~~or~~ and "part 816 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)."

~~(13)~~ "Section 775.13" shall be replaced by ~~"K.S.A. 49-422a, and amendments thereto."~~

~~(14)~~ "Section 775.11" shall be replaced by ~~"K.S.A. 49-407(d), 49-416a, and amendments thereto, and article 4 of chapter 47 of the Kansas administrative regulations and K.A.R. 47-5-5a (e)."~~

~~(15)~~ (12) "[P]art 785 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)~~(36)~~(39) ~~to (41) through (45), inclusive, and amendments thereto.~~"

(13) "30 CFR 773.15" and "§ 773.15 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(55)."

(14) "§ 774.15" shall be replaced by "K.A.R. 47-6-3."

- (15) “§ 761.14 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(4).”
- (16) “§ 785.13” shall be replaced by “K.A.R. 47-3-42 (a)(39).”
- (17) “§ 761.12(d) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(3).”
- (18) “§ 773.6(d)(3)(ii) of this chapter,” “§ 773.6(a)(1) of this chapter,” and “§ 773.6 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”
- (19) “§§ 773.9 through 773.11 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(49) through (51).”
- (20) “§ 778.11 of this subchapter,” “§§ 778.11(c)(5) and 778.11(d) of this subchapter,” and “§ 778.11(c)(5) of this subchapter ” shall be replaced by “K.A.R. 47-3-42 (a)(2).”
- (21) “§ 778.12 of this subchapter ” shall be replaced by “K.A.R. 47-3-42 (a)(3).”
- (22) “§ 773.12 of this part” and “§ 773.12” shall be replaced by “K.A.R. 47-3-42 (a)(52).”
- (23) “§ 774.11(c) of this subchapter” and “§ 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-6-11 (a)(1).”
- (24) “§ 778.14 of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(5).”
- (25) “§ 773.13” and “§ 773.13(c)” shall be replaced by “K.A.R. 47-3-42 (a)(53).”
- (26) “§ 773.14(b) of this part” and “§§ 773.14(c)(1) through (4)” shall be replaced by “K.A.R. 47-3-42 (a)(54).”
- (27) “[S]ection 510(c) of the Act” shall be replaced by “K.S.A. 49-407 (b), and amendments thereto.”
- (28) “§ 778.9(d) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(1).”
- (29) “§ 773.19 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(57).”

(30) "43 CFR 4.1360 through 4.1369" shall be replaced by "K.A.R. 47-4-14a."

(31) "§ 843.12 of this chapter" shall be replaced by "K.A.R. 47-15-1a (a)(9)."

(32) "§§ 773.25 through 773.27 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(61) through (63)."

(33) "§§ 773.22 and 773.23 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(59) and (60)."

(34) "§ 761.11 of this chapter" shall be replaced by "K.A.R. 47-12-4 (a)(2)."

(35) "§ 816.111(d) or § 817.111(d)" shall be replaced by "K.A.R. 47-9-1 (c)(39) or (d)(35)."

(36) "§ 816.106 or § 817.106 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(38) or (d)(34)."

(37) "§ 701.5 of this chapter" shall be replaced by "K.A.R. 47-2-75 (b)."

(38) "§§ 773.7 through 773.14 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(47) through (54)."

(39) "§ 773.21(d) of this part" and "paragraphs (a) and (b) § 773.21 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(58)."

(40) "§ 773.23 of this part" shall be replaced by "K.A.R. 47-3-42 (a)(60)."

(41) "[T]he procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)" shall be replaced by "K.A.R. 47-4-14a."

(42) "§ 843.14 of this chapter, or the state regulatory program equivalent" shall be

replaced by “K.A.R. 47-15-1a (a)(11).”

(43) “§ 773.22(b) or (c) of this part” and “§ 773.22 (e) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(59).”

(44) “§ 773.26(a) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(62).”

(45) “§ 773.27(b) of this part” shall be replaced by “K.A.R. 47-3-42 (a)(63).”

(46) “§§ 773.27 and 773.28 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(63) and (64).”

(47) “§ 842.16 of this chapter (when osm is the regulatory authority) or under § 840.14 of this chapter (when a state is the regulatory authority)” shall be replaced by “K.A.R. 47-15-1a (a)(2).”

(48) “Rule 4 of the federal rules of civil procedure, or its state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a.”

(49) “43 CFR 4.1380 through 4.1387 or, when a state is the regulatory authority, the state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a and K.S.A. 49-416a, and amendments thereto.”

(50) “[B]y a reviewing administrative or judicial tribunal” shall be replaced by “by an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination.”

(51) “State regulatory authority with jurisdiction over the application or permit” and “regulatory authority” shall be replaced by “the Kansas department of health and environment.”

(52) “[C]entral office of the applicable state regulatory authority, if any” shall be replaced

by “the Kansas department of health and environment, surface mining section.”

(53) “Office of hearings and appeals or its state counterpart” shall be replaced by “office of administrative hearings, a division of the Kansas department of administration.”

(54) “§ 762.13(c) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(12).”

(55) “§ 761.14 or § 761.15 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(4) or (5).”

(56) “§ 800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(15).”

(57) “§§ 773.21 or 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(58) and K.A.R. 47-6-11 (a)(1).”

(58) “30 CFR 780.16” shall be replaced by “K.A.R. 47-3-42 (a)(26).”

(59) “30 CFR 816.22,” “§ 816.22 of this chapter,” and “§ 816.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5).”

(60) “§ 816.133” and “30 CFR 816.133” shall be replaced by “K.A.R. 47-9-1 (c)(45).”

(61) “[S]ubchapter B or K of this chapter” shall be replaced by “K.A.R. 47-9-4 or K.A.R. 47-9-1.”

(62) “§§ 816.61 through 816.68 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(16) through (21).”

(63) “§ 816.67” shall be replaced by “K.A.R. 47-9-1 (c)(20).”

(64) “30 CFR 779.24 through 779.25” shall be replaced by “K.A.R. 47-3-42 (a)(18) through (19).”

(65) “30 CFR 780.25” shall be replaced by “K.A.R. 47-3-42 (a)(31).”

(66) "30 CFR 780.35" shall be replaced by "K.A.R. 47-3-42 (a)(36)."

(67) "§§ 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c), 816.74(c), and 816.81(c) of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(31) and (36) and K.A.R. 47-9-1 (c)(22), (23), and (25)."

(68) "30 CFR 816.95" shall be replaced by "K.A.R. 47-9-1 (c)(30)."

(69) "§ 816.97 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(31)."

(70) "30 CFR 780.18 through 780.37" shall be replaced by "K.A.R. 47-3-42 (a)(27) through (37)."

(71) "30 CFR 816.111 through 816.116" shall be replaced by "K.A.R. 47-9-1 (c)(39) through (42)."

(72) "30 CFR 816.116" shall be replaced by "K.A.R. 47-9-1 (c)(42)."

(73) "30 CFR 816.59" shall be replaced by "K.A.R. 47-9-1 (c)(15)."

(74) "30 CFR 816.89 through 816.102" shall be replaced by "K.A.R. 47-9-1 (c)(29) through (35)."

(75) "30 CFR 816.13 through 816.15" shall be replaced by "K.A.R. 47-9-1 (c)(2) through (4)."

(76) "§§ 816.41 through 816.43" shall be replaced by "K.A.R. 47-9-1 (c)(6) through (8)."

(77) "§ 779.25 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(19)."

(78) "§§ 816.81–816.84 of this chapter" and "30 CFR 816.81–816.84" shall be replaced by "K.A.R. 47-9-1 (c)(25) through (27)."

(79) "§ 816.49 of this chapter" and "§ 816.49(a)(4)(ii) of this chapter" shall be replaced

by “K.A.R. 47-9-1 (c)(12).”

(80) “30 CFR 816.79” and “§ 816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(24).”

(81) “30 CFR 816.43 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(8).”

(82) “§ 761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(6).”

(83) “§ 761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(7).”

(84) “30 CFR 816.71–816.74” and “§§ 816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(22) through (23).”

(85) “30 CFR 816.71(d)” shall be replaced by “K.A.R. 47-9-1 (c)(22).”

(86) “§ 816.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(46).”

(87) “§ 816.151(b) of this chapter,” “§ 816.151(c)(2) of this chapter,” “§ 816.151(d)(5) of this chapter,” and “§ 816.151(d)(6) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(47).”

(88) “§ 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(49).”

(89) “§ 774.13 of this chapter” and “§ 774.13” shall be replaced by “K.A.R. 47-6-2.”

(90) “Part 823 of this chapter,” “part 823 of this chapter,” and “30 CFR part 823” shall be replaced by “K.A.R. 47-9-1(f).”

(91) “§ 816.100 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(33).”

(92) “30 CFR part 819” shall be replaced by “K.A.R. 47-9-1 (e).”

(93) “[P]art 827 of this chapter” shall be replaced by “K.A.R. 47-9-1 (g).”

(94) “§ 827.13 of this chapter” shall be replaced by “K.A.R. 47-9-1 (g)(3).”

(95) “30 CFR part 828” shall be replaced by “K.A.R. 47-9-1 (h).”

(96) “30 CFR parts 817 and 828” shall be replaced by “K.A.R. 47-9-1 (d) and (h).”

(97) “§§ 778.11 through 778.14 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(2) through (5).”

(98) “§§ 773.13 and 773.14 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(53) and (54).”

(99) “§ 785.25 of this subchapter” and “§ 785.25 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(45).”

(100) “§ 701.11(d)” shall be replaced by “K.A.R. 47-3-42 (a)(65).”

(101) “§§ 773.26 and 773.27 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(62) and (63).”

(102) “§§ 778.11 and 778.12(c) of this subchapter ” shall be replaced by “K.A.R. 47-3-42 (a)(2) and (3).”

(103) “§ 778.15(b) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(6).”

(104) “30 CFR 816.102 through 816.107” shall be replaced by “K.A.R. 47-9-1 (c)(35) through (38).”

(105) “§ 816.46 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(10).”

(106) “[T]he procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)” shall be replaced by “K.A.R. 47-4-14a.”

(107) “30 CFR 780.12 or 784.12” shall be replaced by “K.A.R. 47-3-42 (a)(22) or K.A.R. 47-10-1 (a)(2)(C).”

(108) “43 CFR 4.1376 or the State regulatory program equivalent” shall be replaced by
"K.A.R. 47-4-14a." (Authorized by K.S.A. 49-405 and 49-427; implementing K.S.A. 49-405,
49-406, 49-407, and 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended
May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended
May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 4 - PUBLIC HEARINGS

47-4-14a. Administrative hearing procedure. (a) Appeals and applications. ~~The following shall be the regulations that~~ This article and articles 5, 6, and 15 shall govern the procedure used in all administrative hearings resulting from the following actions:

- (1) Petitions for review of proposed civil penalty assessments issued by the secretary;
- (2) applications for review of notices of violation and orders of cessation or modification, vacation or termination of notices of violation, and orders of cessation;
- (3) applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;
- (4) applications for temporary relief;
- (5) applications for review of alleged discriminatory acts;
- (6) petitions for award of costs and expenses;
- (7) appeals from initial orders or decisions of presiding officers; and
- (8) all other appeals and review procedures authorized by the act.

(b) ~~Definitions~~ Definition. As used in these regulations, the following ~~definitions~~ definition shall apply:

- ~~(4)~~ "Party" means either of the following:

(1) The person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, or petition for award of costs and expenses, is specifically directed; or

(2) a person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding.

(c) Rules of procedure.

(1) Hearing location. Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties; and their representatives and witnesses, except as otherwise provided by the state act.

(2) Document filing. All documents that are to be filed in a proceeding governed by this ~~section~~ article shall be filed with the ~~administrative appeals section of the Kansas department of health and environment, suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215~~ office of administrative hearings, a division of the Kansas department of administration.

(3) Proof of service. A person who has initiated a proceeding under this regulation shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return when service is made personally. A certificate of service shall be contained in all other documents filed by a party.

(4) Filing date. The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the administrative appeals section if filed personally, or the postmark date if filed by mail. The burden of establishing the date of mailing shall be on the person filing the document.

(5) Document information. All documents shall be captioned with the following information:

(A) The name of the party;

(B) the name of the facility, mine, or site to which the document pertains; and

(C) if appropriate, the following information:

(i) The number of the notice, order, or other agency decision or action to which the appeal pertains;

(ii) the case number assigned to the original agency action; and

(iii) any other identifying information, including permit number.

(6) Service.

(A) Copies of documents that initiate a proceeding shall be served upon all parties by registered or certified mail, return receipt requested.

(B) Copies of all subsequent documents shall be served personally or by first-class mail.

(C) Service of all documents shall be complete at the time of personal service, or, if by mail, upon receipt.

(D) ~~When~~ If an attorney has entered an appearance on behalf of a party, thereafter service shall be made upon the attorney.

(7) Intervention. Any person may petition for leave to intervene in a proceeding. Each petition shall set out the interest of the petitioner and ~~why~~ the manner in which the petitioner's interest is or ~~may~~ could be affected.

(A) The presiding officer shall grant intervention if the petitioner fulfills these requirements:

(i) Had a statutory right to initiate the proceeding into which the petitioner seeks intervention; or

(ii) has an interest that is or ~~may~~ could be adversely affected by the outcome of the proceeding.

(B) If ~~subsections~~ paragraphs (c)(7)(A)(i) or and (c)(7)(A)(ii) of this regulation are not applicable, the presiding officer shall consider the following to determine if intervention is appropriate:

(i) The nature of the issues;

(ii) the adequacy of the representation of petitioner's interest provided by the existing parties;

(iii) the ability of the petitioner to present relevant evidence and argument; and

(iv) the effect of intervention on the agency's implementation of its statutory duties.

(C) Each person granted leave to intervene shall participate as a party.

(D) The presiding officer shall determine the extent and terms of limited participation by an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding may withdraw it by moving to dismiss. The presiding officer may grant such a motion.

(9) Pleadings, motions, briefs; service. At appropriate stages of the proceeding, each party shall be given full opportunity to file pleadings, motions, and objections.

(A) Each pleading and motion shall be submitted in writing and shall state concisely the supporting grounds.

(B) Each party shall have 15 days from the date of service of the pleading in which to file a response, unless otherwise ordered by the presiding officer.

(C) Failure to make a timely motion or response shall be construed as a waiver of objection.

(D) Each motion shall be ruled upon expeditiously.

(E) At appropriate stages, each party shall be given full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial and final orders.

(F) Each document filed pursuant to this subsection shall be served on all parties by mail or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or law, ~~they~~ the proceedings shall be consolidated pursuant to a motion by a party or the presiding officer.

(11) Waiver of hearing. Any person entitled to a hearing may waive ~~such~~ this right in writing. Any person required to file a responsive pleading who fails to do so by the required time may be deemed to have waived the person's right to a hearing. Unless all parties who are entitled to a hearing waive ~~such~~ these rights or are deemed to have waived ~~such~~ these rights, a hearing shall be held.

(d) Formal hearings. ~~When~~ If a statute provides for a hearing in accordance with these regulations, the hearing shall be governed by this subsection.

(1) Participation and representation.

(A) Each party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(B) Whether or not participating in person, ~~each~~ any party may be represented at the partys own expense by counsel or, if permitted by law, other representative.

(C) Each corporation or other artificial person shall participate by counsel.

(2) Presiding officer.

(A) ~~The secretary or one or more other persons designated by the secretary~~ An administrative hearing officer from the office of administrative hearings shall be the presiding officer.

(B) Each person serving or designated to serve alone or with others as presiding officer shall be subject to disqualification for administrative bias, prejudice, or interest.

(C) Any party may petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(D) ~~A~~ Each presiding officer whose disqualification is requested shall determine whether or not to grant the petition, stating facts and reasons for the determination. ~~In the event that~~ If the presiding officer fails to grant a petition for disqualification, the petitioning party may file an

affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.

(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, each action taken by a duly appointed substitute for a disqualified or unavailable presiding officer shall be as effective as if taken by the disqualified or unavailable presiding officer.

~~(F) Agreements may be entered into by the department with another state agency to provide hearing officers the opportunity to conduct proceedings under these regulations.~~

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted, ~~these shall apply:~~

~~(A) A presiding officer shall be assigned by the department for the prehearing conference, exercising the same discretion as is provided by subsection (d)(2) concerning the selection of a presiding officer for a hearing.~~

~~(B)~~ the presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) Prehearing conference. The prehearing conference notice shall include the following:

(A) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(D) a statement of the time, place, and nature of the prehearing conference;

(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;

(F) the name, official title, mailing address, and telephone number of the presiding officer for the prehearing conference;

(G) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default; and

(H) a notice that may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with ~~such~~ matters ~~as~~ including the following:

(i) Exploration of settlement possibilities;

(ii) preparation of stipulations;

- (iii) clarification of issues;
- (iv) rulings on identity and limitation of the number of witnesses;
- (v) objections to proffers of evidence;
- (vi) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;
- (vii) order of presentation of evidence and cross-examination;
- (viii) rulings regarding issuance of subpoenas;
- (ix) discovery orders and protective orders; and
- (x) ~~such~~ any other matters as that will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The time and place of the hearing shall be set by the presiding officer. Reasonable written notice at least 10 days before the hearing shall be given to all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with ~~subsection~~ paragraph (d)(18) of this regulation, ~~as amended~~.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(C) To the extent not included in the prehearing order accompanying it, the notice shall include the following:

(i) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;

(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and

(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(E) The presiding officer shall cause notice to be given to any other person entitled to notice under any other provisions of law; who has not been given notice under ~~subsection~~ paragraph (d)(6)(A) of this regulation, as follows:-

(i) Notice under this subsection shall be given in the manner specified by ~~such provision of law~~ these regulations or, if no such manner is specified, in a manner determined by the ~~agency~~ office of administrative hearings, a division of the Kansas department of administration.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection may include all types of information provided in ~~subsections~~ paragraphs (d)(6)(A) through (D) of this regulation or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings that are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) Notice of the hearing shall be posted by the department at the surface mining section office and, where practicable, shall be published in a newspaper of general circulation in the area of the mine at least seven days ~~prior to~~ before the hearing.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing, or other adjudicative proceeding, the presiding officer may serve all parties with written notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom ~~it~~ the order was issued may file a written motion requesting that the proposed default order be vacated, and stating the grounds relied upon. During this period, the presiding officer may

adjourn the proceedings or conduct them without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service, unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without the defaulting party's participation. In lieu of determining the issues affecting the defaulting party, the presiding officer may dismiss ~~such~~ the party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and if immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. ~~Each~~ Any party may move for summary decision, in whole or in part, after a proceeding has begun.

(A) The moving party shall verify each allegation of fact with ~~a~~ at least one supporting affidavit ~~or affidavits~~, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify each allegation.

(B) The presiding officer shall grant such a motion for summary judgment if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows both of the following:

(i) There is no disputed issue as to any material fact; ~~and,~~

(ii) The moving party is entitled to a summary decision as a matter of law.

(C) If complete summary decision is not granted and an evidentiary hearing is necessary, the presiding officer shall, if practicable, perform the following:

- (i) Examine all relevant evidence and documents in the record;
- (ii) ascertain what material facts are controverted in good faith;
- (iii) issue an order specifying those facts that are not substantially controverted; and
- (iv) direct any further proceedings that the presiding officer determines are necessary.

(10) Proceedings. The presiding officer shall ~~perform these duties~~ meet the following requirements:

(A) Shall regulate the proceedings;

(B) shall afford to each party the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the prehearing order;

(C) may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty, the following shall apply:

- (i) Each party shall have an opportunity to challenge or rebut the statement; and
- (ii) any party may, by motion, require the statement to be given under oath or confirmation;

(D) may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding;

(E) shall cause the hearing to be recorded at the state agency's expense. The state agency shall not be required, at its expense, to prepare a transcript, unless required to do so by any other provision of law. ~~Each~~ Any party, at the party's expense and subject to ~~such~~ any reasonable conditions ~~as that~~ the state agency may establish, may cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing; and

(F) may close parts of the hearing from public observation only when a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law with a supporting brief ~~therefor~~ at a time set forth by the presiding officer.

(12) Evidence; official notice.

(A) A presiding officer shall not be bound by the statutory rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence ~~may~~ shall not be excluded solely because it is hearsay.

(B) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer shall have the power to administer an oath or affirmation for that purpose.

(C) Statements presented by nonparties in accordance with ~~subsection~~ paragraph (d)(10)(C) of this regulation shall be received as evidence.

(D) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(F) Official notice shall be taken of the following:

- (i) Any matter that could be judicially noticed in the courts of this state;
- (ii) the record of other proceedings before the state agency;
- (iii) technical or scientific matters within the state agency's specialized knowledge; and
- (iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Each party shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source, including any staff memoranda and data. Each party shall be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which shall become a final order unless reviewed in accordance with ~~subsection~~ paragraph (d)(14) of this regulation.

(C) ~~A~~ Each final order or initial order shall include, separately stated, findings of fact, conclusions of law, and policy reasons for the decision if ~~it~~ the order is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review, or other administrative relief. ~~An~~ Each initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties to a proceeding to have an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the presiding officer.

(G) A final order or initial order pursuant to this ~~section~~ regulation shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (d)(13)(F) of this regulation, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner prescribed by ~~subsection~~ paragraph (d)(18) of this regulation.

(14) Review of initial order; exceptions to reviewability.

(A) ~~The secretary or secretary's designee, Upon the secretary~~ secretary's or secretary's designee's own motion may, and upon petition by , any initial order may be reviewed by the secretary or secretary's designee, unless paragraph (d)(14)(A)(i) or (ii) applies. If any party petitions for review of an initial order or when required by if the law shall, review an requires the review of an initial order by the secretary or secretary's designee, except to the extent that these conditions apply unless either of the following paragraphs applies:

- (i) A provision of law precludes or limits review of the initial order; or
- (ii) the secretary or secretary's designee determines to review some but not all issues, or not to exercise any review, or delegates ~~its~~ the authority to review the initial order to one or more persons, unless ~~such~~ this delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the secretary or secretary's designee.

(B) A petition for review of an initial order shall be filed with the secretary or secretary's designee, or with any person designated for this purpose by regulation of the department, within 15 days after service of the initial order. If the secretary or secretary's designee ~~on the secretary or secretary's designee's~~ that individual's own motion decides to review an initial order, ~~the secretary or secretary's designee shall give~~ written notice of ~~the secretary or secretary's designee's~~ that individual's intention to review the initial order shall be given by the secretary or designee within 15 days after the initial order is issued. If the secretary or secretary's designee determines not to review an initial order in response to a petition for review, ~~the secretary or secretary's designee shall,~~ within 20 days after the filing of the petition for review, ~~serve on each party~~ an order stating that review will not be exercised shall be served on each party by the secretary or designee.

(C) The petition for review shall state its basis. If the secretary or secretary's designee ~~on the secretary or secretary's designee's~~ that individual's own motion gives notice of its intent to review an initial order, ~~the secretary or secretary's designee shall identify~~ the issues ~~that it intends to~~ intended for review shall be specified by that individual.

(D) In reviewing an initial order, ~~the secretary or secretary's designee shall exercise~~ all the decision-making power that the secretary or secretary's designee would have had to render a final order had the secretary presided over the hearing shall be exercised by the secretary or designee, except to the extent that the issues subject to review are limited by a provision of law or by the secretary or secretary's designee upon notice to all parties.

(E) ~~The secretary or secretary's designee shall afford~~ Each party shall be afforded an opportunity to present briefs and ~~shall afford each party~~ an opportunity to present oral argument by the secretary or designee.

(F) ~~The secretary or secretary's designee shall render~~ A final order disposing of the proceeding shall be rendered by the secretary or designee, or remand the matter shall be remanded by the secretary or designee for further proceedings with instructions to the presiding officer who rendered the initial order. ~~Upon remanding~~ When a matter is remanded, the ~~secretary or secretary's designee shall order~~ any temporary relief that is authorized and appropriate shall be ordered by the secretary or designee.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument, unless that period is waived or extended with written consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this ~~section~~ article shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by paragraph (d)(13)(C) of this regulation.

(I) ~~The secretary or secretary's designee shall cause~~ Copies of the final order or order remanding the matter for further proceedings shall be caused to be served on each party by the secretary or designee in the manner prescribed by ~~subsection~~ paragraph (d) (18) of this regulation.

(15) Stay. A party may submit to the presiding officer or secretary or secretary's designee a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. ~~The presiding officer or secretary or secretary's designee may take~~ Action may be taken on the petition for stay by the presiding officer or by the secretary or designee, either before or after the effective date of the initial or final order.

(16) Reconsideration.

(A) Each party, within 15 days after service of a final order, may file a petition for reconsideration with the secretary or secretary's designee, stating the specific grounds upon which relief is requested. The filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(B) ~~The secretary shall render~~ A written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings shall be rendered by the secretary. The petition may be granted, in whole or in part, only if the secretary states, in the written order, findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the ~~department's~~ secretary's discretion, to justify the order. The petition shall be deemed to have been denied if the secretary does not dispose of ~~it~~ the petition within 20 days after the filing of the petition.

(C) ~~An~~ Each order under ~~this section~~ these regulations shall be served on the parties in the manner prescribed by ~~subsection~~ paragraph (d)(18) of this regulation.

(17) Orders, when effective.

(A) Unless a later date is stated in a final order or a stay is granted, ~~a~~ each final order shall be effective upon service.

(B) Unless a later date in an initial order or a stay is granted, an initial order shall become effective and shall become the final order under these circumstances:

- (i) When the initial order is served, if administrative review is unavailable;
- (ii) when the secretary serves an order stating, after a petition for review has been filed, that review will not be exercised; or
- (iii) when, 30 days after service ~~if~~ of the initial order, no party has filed a petition for review by the secretary, ~~and~~ the secretary has not given written notice of its intent to exercise review, and review by the secretary is not otherwise required by law.

(18) Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. ~~Delivery of~~ Delivering a copy of ~~an~~ the order or notice ~~means~~ shall mean handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence and with a person of suitable age and discretion who works or resides ~~therein~~ there. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail shall be complete upon mailing. Whenever a party has the right or is required to ~~do~~ perform some act or file a petition within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

(19) Record.

(A) ~~The department shall maintain~~ An official record of each formal hearing shall be maintained by the department.

(B) The record shall consist ~~only~~ of only these items:

- (i) The notices of all proceedings;
- (ii) any prehearing order;
- (iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (iv) all evidence received or considered;
- (v) a statement of matters officially noticed;
- (vi) proffers of proof and objections and rulings on the proffers;
- (vii) proposed findings, requested orders, and exceptions;
- (viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
- (ix) any final order, initial order, or order on reconsideration; and
- (x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that these regulations or another statute provides otherwise, the department's record, excluding matters under ~~subsection~~ paragraph (d)(19)(B)(x) of this regulation, shall constitute the exclusive basis for the departments action in formal hearings and for judicial review of the department's action. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective Feb. 11, 1991; amended May 2, 1997; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 5 - CIVIL PENALTIES

47-5-5a. Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated:

- (1) How assessments are made, 30 CFR 845.11;
- (2) when penalty will be assessed, 30 CFR 845.12;
- (3) point system for penalties, 30 CFR 845.13;
- (4) determination of amount of penalty, 30 CFR 845.14;
- (5) assessment of separate violations for each day, 30 CFR 845.15;
- (6) waiver of use of formula to determine civil penalty, 30 CFR 845.16;
- (7) procedures for assessment of civil penalties, 30 CFR 845.17;
- (8) procedures for assessment conference, 30 CFR 845.18. However, the following sentence shall be deleted: "The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings";
- (9) request for hearing, 30 CFR 845.19. However, subsection (b) shall be replaced by the following text: "(b) The department shall hold all funds submitted under paragraph (a) of this section in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in K.A.R. 47-5-16"; and
- (10) ~~individual civil penalties, 30 CFR part 846, deleting the phrase "a Federal lands~~

program,” and changing the phrase “Federal enforcement of a state program pursuant to section 521 of the act” to “enforcement of a state program pursuant to K.S.A. 49-405 of the state act” in 30 CFR 846.5. 30 CFR 870.15 (e)(1)-(5) and (f), deleting “This penalty is in addition to the interest described in paragraph (c) of this section”; and (g) shall be adopted by reference as they relate to 30 CFR 846.18 (d). when an individual civil penalty may be assessed, 30 CFR 846.12;

(11) amount of individual civil penalty, 30 CFR 846.14;

(12) procedure for assessment of individual civil penalty, 30 CFR 846.17; and

(13) payment of penalty, 30 CFR 846.18. However, subsection (d) shall be replaced by the following text:

“(d)(1) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. department of the treasury for use in applying late charges on later payments to the federal government, pursuant to the treasury financial manual 6-8020.20. The treasury current value of funds rate is published by the fiscal service in the notices section of the federal register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the following actions, which are not exclusive:

“(i) Initiation of litigation;

“(ii) reporting to the internal revenue service;

“(iii) reporting to state agencies responsible for taxation;

“(iv) reporting to credit bureaus; or

“(v) referral to collection agencies.

“(2) If a penalty debt is greater than 91 days overdue, a six percent per annum penalty shall begin to accrue on the amount owed for fees and shall run until the date of payment. This penalty is in addition to the interest described in this regulation.

“(3) For all delinquent penalties and interest, the debtor shall be required to pay a processing and handling charge that shall be based on the following components:

“(i) For debts referred to a collection agency, the amount charged to the department by the collection agency;

“(ii) for debts processed and handled by the surface mining section, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection;

“(iii) for debts referred to the office of legal services, Kansas department of health and environment, but paid before litigation, the estimated average cost to prepare the case for litigation at the time of payment;

“(iv) for debts referred to the office of legal services, Kansas department of health and environment, and litigated, the estimated cost to prepare and litigate a debt case at the time of payment;

“(v) if not otherwise provided for, all other administrative expenses associated with collection, including billing, recording payments, and follow-up actions; and

“(vi) no prejudgment interest accrues on any processing and handling charges.”

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-5-5a (a).~~ in this regulation:

(1) “Act” shall be replaced by “state act.”

(2) “Director” ~~or~~ and “director or his designee” shall be replaced by “secretary of health and environment or secretary’s designee.” However, in 30 CFR 816.12, the phrase “director” shall remain unchanged.

(3) “Secretary” shall be replaced by “secretary of health and environment.”

(4) “[S]ection 521(a) of the act” shall be replaced by “K.S.A. 49-405 (m)(2), and amendments thereto.”

(5) “[S]ection 525(c) of the act” shall be replaced by “K.S.A. 49-416a (c), and amendments thereto.”

(6) “[S]ection 526 of the act” and “section 526(c) of the act” shall be replaced by “K.S.A. 49-422a , and amendments thereto.”

(7) “[S]ection 518(e), 518(f), (a)(4), or 521(c) of the act” shall be replaced by “K.S.A. 49-405c (e), 49-405c (f), 49-405 (m)(3), or 49-405 (m)(4), and amendments thereto respectively.”

(8) “Office,” “State or field office,” ~~or~~ and “office of hearings and appeals” shall be

replaced by “department.”

(9) “[S]ections 518, 521(a)(4), and 525 of the act” shall be replaced by “K.S.A. 49-405c, 49-405 (m)(3), and 49-416a, and amendments thereto.”

(10) “30 CFR 845.20” shall be replaced by “K.A.R. 47-5-16.”

(11) “43 CFR 4.1300 *et seq.*” and “rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”

(12) ~~“Standard” shall be replaced with “state regulation, or standard.”~~

~~(13) “30 CFR 843.16” shall be replaced by “K.A.R. 47-4-14a.”~~

~~(14) “Section 521” shall be replaced by “K.S.A. 49-405.”~~

~~(15) “Section 502” shall be replaced by “K.S.A. 49-406.”~~

~~(16) “Section 703” shall be replaced by “K.S.A. 75-2973.”~~

~~(17)~~ (13) ~~“Hearing’s Hearings~~ Hearings Division, Office of Hearings and Appeals, U.S.

Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800)” shall be replaced by ~~“Administrative appeals coordinator, administrative appeals section, office of the secretary, Kansas department of health and environment, mills building, suite 400D, 109 sw 9th street, Topeka, Kansas 66612-1215~~ Office of administrative hearings, a division of the Kansas department of administration.”

~~(18) “Section 518(b)” shall be replaced by “K.S.A. 49-405c (b).”~~

~~(19) “Federal” shall be replaced by “state.”~~

(14) “30 CFR 845.12, 845.13, 845.14, 845.15 and 845.16” shall be replaced by “K.A.R.

47-5-5a (a)(2), (3), (4), (5), and (6)."

~~(20) The following terms shall be replaced in 30 CFR 870.15 (g).~~

~~(A) "OSM" shall be replaced by "the surface mining section."~~

~~(B) "Solicitor, Department of the Interior" shall be replaced by "office of legal services, Kansas department of health and environment."~~

(15) "30 CFR 816.11" shall be replaced by "K.A.R. 47-9-1 (c)(1)."

(16) "30 CFR 845.17(b)" shall be replaced by "K.A.R. 47-5-5a (a)(7)."

(17) "30 CFR 845.13," "30 CFR 845.13(b)," and "§ 845.13(b)" shall be replaced by "K.A.R. 47-5-5a (a)(3)."

(18) "30 CFR 845.12 (b)" shall be replaced by "K.A.R. 47-5-5a (a)(2)."

(19) "[S]ection 518(a) of the act" shall be replaced by "K.S.A. 49-405c (a)."

(20) "§ 846.12" shall be replaced by "K.A.R. 47-5-5a (a)(10)."

(c) Review of proposed assessments of civil penalties. ~~In the event~~ If a request for hearing is made pursuant to ~~subsection paragraph~~ (a)(9) of these regulations this regulation, the procedures set forth in K.A.R. 47-4-14a and the following shall apply.

(1) Time for filing petition.

(A)(i) A petition for review of a proposed assessment of a civil penalty shall be filed within 30 days of receipt of the proposed assessment; or

(ii) if a timely request for a conference has been made pursuant to ~~subsection paragraph~~ (a)(8) of this regulation, a petition for review shall be filed within 15 days after service of notice

by the presiding officer that the conference is completed.

(B) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (c)(1)(A)(i) or (A)(ii). If a petition for review is not filed within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under K.S.A. 49-416a (a), and amendments thereto, to review the notice of violation or cessation order involved, shall be admitted; the petition shall be dismissed; and the civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include the following:

(i) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in ~~K.A.R. 47-5-5a~~ subsection (a), adopting by reference 30 CFR Part 845 and 846, was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

(iii) the identification by number of each violation being contested;

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing.

(B) The petition shall be accompanied by these items:

(i) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check, or bank money order made payable to the Kansas department of health and environment, to be placed in an escrow account pending final determination of the assessment; and

(ii) on the face of the payment, an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 49-405c (c); and amendments thereto, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time shall be granted for full payment of the proposed assessment. If payment is not made within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), the appropriateness of the amount of the penalty, the fact of the violation, and, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted; the petition shall be dismissed; and the civil penalty assessed shall become a final order of the secretary.

(3) Answer. The department shall have 30 days from receipt of a copy of the petition within which to file an answer.

(4) Review of waiver determination.

(A) Within 10 days of the filing of a petition, the petitioner may move the presiding

officer to review the granting or denial of a waiver of the civil penalty formula pursuant to paragraph (a)(6) of this regulation.

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver.

(C) Review shall be limited to the written determination of the ~~department~~ presiding officer granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the ~~department~~ secretary abused ~~its~~ the secretary's discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to paragraph (c)(7) of this regulation.

(5) Burden of proof in civil penalty proceedings. In civil penalty proceedings, the department shall have the burden of going forward to establish a prima facie case as to the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(6) Summary disposition.

(A) In a civil penalty proceeding in which the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a presiding officer, the presiding officer shall issue an order to show cause for the following conditions:

- (i) That person should not be deemed to have waived the person's right to a hearing; and
 - (ii) the proceedings should not be dismissed and the assessment should become final.
- (B) If the order to show cause is not satisfied as required, the presiding officer shall

order the proceedings summarily dismissed and issue a final order.

(C) ~~When~~ If the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person shall be deemed to have waived the person's right to a hearing, and the presiding officer may assume₂ for purposes of the assessment₂ the following:

- (i) The occurrence of each violation listed in the notice of violation or order; and
- (ii) the truth of any facts alleged in ~~such~~ the notice or order.

(D) In order to issue an initial order assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this ~~section~~ article shall be construed to deprive the person against whom the penalty is assessed of the person's opportunity to have the department prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except when that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of the presiding officer.

(A) The presiding officer shall incorporate₂ in the presiding officer's decision concerning the civil penalty, findings of fact on each of the four criteria set forth in ~~K.A.R. 47-5-5a~~ paragraph (a)(3) and conclusions of law.

(B)(i) If the presiding officer finds that a violation occurred or that the fact of violation is uncontested, the presiding officer shall establish the amount of the penalty, but in so doing, the presiding officer shall adhere to the point system and conversion table contained in 30 CFR 845.13 and 845.14 adopted by reference in ~~K.A.R. 47-5-5a~~ paragraphs (a)(3) and (4), except that the presiding officer may waive the use of ~~such~~ the point system ~~where~~ if the presiding officer determines that a waiver would further abatement of violations of the state act. However, the presiding officer shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act.

(ii) If the presiding officer finds that no violation occurred, the presiding officer shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer finds that no violation occurred or reduces the amount of the civil penalty ~~below the proposed assessment, and if a timely petition for review of the presiding officer's decision is not filed with the secretary, or if the secretary refuses to grant the petition,~~ the presiding officer shall order the department to remit the appropriate amount to the ~~person~~ petitioner who made the payment, within 30 days of the department's receipt of the order ~~finding no violation or reducing the penalty paid. If a timely petition for review of the presiding officer's decision is filed with the secretary, no amount shall be remitted to the petitioner until a final determination has been made.~~

(D) If the presiding officer increases the amount of the civil penalty above that of the

proposed assessment, the presiding officer shall order payment of the appropriate amount within 15 days after the order increasing the civil penalty is mailed.

(8) Appeals.

(A) Any party may petition the secretary to review and reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14a (d)(14) and (16), respectively.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405c, 49-416a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

NEW PERMANENT REGULATION

ARTICLE 5 - CIVIL PENALTIES

47-5-17. Alternate enforcement; adoption by reference. (a) Subject to the provisions of subsection (b), the following regulations as in effect on July 1, 2001 are hereby adopted by reference, except as otherwise indicated:

- (1) General provisions, 30 CFR 847.2, deleting (c);
- (2) criminal penalties, 30 CFR 847.11; and
- (3) civil actions for relief, 30 CFR 847.16.

(b) The following terms shall be replaced with the indicated terms wherever the terms appear in the text of the federal regulations adopted by reference under K.A.R. 47-5-17.

- (1) "Act" shall be replaced by "state act."
- (2) "Secretary" shall be replaced by "secretary of health and environment."
- (3) "[R]egulatory authority" shall be replaced by "Kansas department of health and environment."
- (4) "Attorney general" shall be replaced by "Kansas' attorney general."
- (5) "[S]ection 521 or 526" shall be replaced by "K.S.A. 49-405 or K.S.A. 49-422a, and amendments thereto."
- (6) "Rule 65 of the federal rules of civil procedure, as amended" shall be replaced by "K.S.A. 60-901 et seq., and amendments thereto."
- (7) "[S]ections 518(e) and (g)" shall be replaced by "K.S.A. 49-405c (e) and (g)."

(8) “[S]ection 521(c)” shall be replaced by “K.S.A. 49-405 (m)(4), and amendments thereto.

(9) “[S]ection 518(e)” shall be replaced by “K.S.A. 49-405 (e), and amendments thereto.

(Authorized by and implementing K.S.A. 49-405; effective P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-1. Permit review. (a) Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of that term. Reasonable revision or modification of the permit provisions may be ordered at any time to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to ~~provisions of K.S.A. 49-407 (d) and K.S.A. 49-422a, and amendments thereto.~~

(b) Each permit authorizing one or more variances that is issued in accordance with K.A.R. 47-3-42 (a)(41) shall be reviewed no later than three years from the date of issuance.

(c) Each permit authorizing one or more experimental practices that is issued in accordance with K.A.R. 47-3-42 (a)(39) shall be reviewed as specified in the permit or at least every two and a half years from the date of issuance as required by the department, in accordance with K.A.R. 47-3-42 (a)(39).

(d) After the review required by this regulation or at any time, the reasonable revision of any permit may be required by the secretary, by order, in accordance with K.A.R. 47-6-2 to ensure compliance with the state act and the regulatory program.

(e) Each order of the department requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of

these regulations. A copy of each order shall be sent to the permittee.

(f) Any permit may be suspended or revoked in accordance with articles 5 and 15 of these regulations. (Authorized by K.S.A. 49-405; and 49-410; implementing K.S.A. 49-406 and ~~49-410~~ 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-2. Permit revision. (a) ~~An~~ Each application made by an operator to ~~amend or~~ revise an existing permit shall be submitted at least 60 days before the date on which the operator desires to have the approval of the secretary.

(b) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, ~~all permit application information, requirements, and procedures shall be met~~ the permittee shall meet all the application requirements, which shall include all requests from the secretary or secretary's designee for relevant information. Whether or not a significant alteration or departure is involved shall be determined by the secretary on a case-by-case basis upon review, unless a determination is requested in writing by the operator upon or before filing the application. On receiving this request, the operator shall be advised by the secretary or secretary's designee if a significant alteration or departure is involved for the purpose of submitting an application.

(c) Each application for permit revision shall be accompanied by a map, ~~when it~~ if a map is required, that meets the general map requirements of these regulations. The proposed ~~amendment~~ revision shall be described in detail and supported by the technical data necessary to establish ~~its~~ the impact and consequences of the proposed revision on the surface coal mining and reclamation operation, the environment, and ~~the~~ public health and safety. Additional information may be requested when necessary to make an evaluation of the impact.

(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that ~~these~~ all of the following conditions ~~exist~~ are met:

(1) The reclamation required by the state act and the regulatory program can be accomplished;

(2) The applicable requirements under K.A.R. 47-3-42 (a)(43) ~~(55)~~ pertinent to the revision are met; ~~and~~.

(3) The application for revision ~~complies with~~ meets all requirements of the state act and the regulatory program.

(e) ~~Any~~ Each extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit. (Authorized by K.S.A. 49-405, 49-410; implementing K.S.A. 49-406 ~~and~~, 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-3. Permit renewals; adoption by reference. (a) The section titled permit renewals, 30 CFR 774.15, as in effect on July 1, 1995 2001, are is hereby adopted by reference, except as otherwise indicated in this regulation. Subsection (c)(3) of 30 CFR 774.15 shall be deleted.

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-6-3~~ in this regulation:

(1) “[S]ubchapter J of this chapter” shall be replaced by “article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

(2) ~~“This chapter” shall be replaced by “these regulations.”~~

~~(3)~~ “Act” shall be replaced by “state act.”

~~(4)~~ (3) “[P]art 775 of this chapter” shall be replaced by “K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

~~(5)~~ (4) “~~Section §~~ 774.13” shall be replaced by “K.A.R. 47-6-2.”

(5) “§ 800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(15).”

(6) “§ 778.21 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(10).”

(7) “§§ 773.6 and 773.19(b) of this chapter ” shall be replaced by “K.A.R. 47-3-42 (a)(46) and (57).”

(8) "§ 773.19" shall be replaced by "K.A.R. 47-3-42 (a)(57)." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended P- _____.)

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-4. Permit transfers, assignments, and sales; adoption by reference. (a) Each application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) Transfer, assignment, or sale of permit rights, 30 CFR 774.17, as in effect on July 1, ~~1995~~ 2001, is adopted by reference, except as otherwise indicated in this regulation.

(c) The following ~~terms~~ phrases shall be replaced with the ~~indicated terms~~ phrases specified in this subsection wherever ~~they~~ the phrases appear in ~~the text of~~ the federal regulations adopted by reference ~~under K.A.R. 47-6-4.~~ in this regulation:

(1) ~~"This chapter"~~ or "[T]his subchapter" shall be replaced by "these regulations."

(2) "[P]art 778 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) ~~to (8)~~, inclusive through (11)."

(3) "[S]ubchapter J of this chapter" shall be replaced by "article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations."

(4) "Act" shall be replaced by "state act."

(5) "§ 773.12 and 773.15 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(52) and (55)." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-410; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb.

11, 1991; amended May 2, 1997; amended July 31, 1998; amended P- _____.)

11/15/05

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-6. Permit conditions; adoption by reference. (a) The section titled permit conditions, 30 CFR 773.17, as in effect on July 1, ~~1995~~ 2001, ~~are~~ is adopted by reference, except as otherwise indicated in this regulation.

(b) The following ~~terms~~ phrases shall be replaced with the ~~indicated terms~~ phrases specified in this subsection wherever ~~they~~ the phrases appear in ~~the text of the federal regulations~~ regulation adopted by reference ~~under subsection (a) of~~ in this regulation-:

(1) “[S]ubchapter J of this chapter” shall be replaced by “article 8 of ~~chapter 47 of the~~ Kansas administrative these regulations.”

(2) ~~“This chapter” shall be replaced by “these regulations.”~~

~~(3)~~ “Act” shall be replaced by “state act.”

~~(4)~~ (3) “[P]arts 840 and 842” shall be replaced by “K.A.R. 47-15-1a.”

~~(5)~~ (4) “§ 701.11(d) and subchapter B or K of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(65) and either K.A.R. 47-9-4 or K.A.R. 47-9-1.”

~~(6)~~ (5) “[S]ubchapter R of this chapter” ~~or~~ and “that subchapter” shall be replaced by “the office of surface mining reclamation and enforcement.”

(6) “§§ 842.13 and 840.12 of this chapter” shall be replaced by “K.A.R. 47-15-1 a(a)(4).”

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E-81-30, Oct. 8, 1980;

effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997;
amended July 31, 1998; amended P- _____.)

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-8. Termination of jurisdiction; adoption by reference. (a) The section titled applicability, 30 CFR 700.11, as in effect on July 1, ~~1995~~ 2001, is adopted by reference, except as otherwise indicated in this regulation, and subsections (a)(1), (a)(5), and (b) of 30 CFR 700.11 shall be deleted.

(b) The following ~~terms~~ phrases shall be replaced with the ~~indicated terms~~ phrases specified in this subsection wherever ~~they~~ the phrases appear in ~~the text of the federal regulations~~ regulation adopted by reference ~~under K.A.R. 47-6-8 (a).~~ in this regulation:

(1) "[T]he State or Federal program counterpart to part 800 of this chapter" shall be replaced by "article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations."

(2) "[T]his chapter" shall be replaced by "these regulations."

(3) "[S]ubchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(4) "[P]art 707 of this chapter" shall be replaced by "K.A.R. 47-6-9."

(5) "[P]art 702 of this chapter" shall be replaced by "K.A.R. 47-6-10." (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-9. Exemption for coal extraction incident to government-financed highway or other construction; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise ~~indicated~~ specified in this regulation:

(1) Responsibility, 30 CFR 707.4;

(2) definitions, 30 CFR 707.5;

(3) applicability, 30 CFR 707.11, except that the phrase "Federal or Federal lands" shall be deleted; and

(4) information to be maintained on site, 30 CFR 707.12.

(b) The following phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-6-9(a)~~ in this regulation:

(1) "Act" shall be replaced by "state act."

(2) "[T]his chapter" shall be replaced by "these regulations."

(3) "~~Parts~~ 30 CFR 707.12" shall be replaced by "K.A.R. 47-6-9 ~~(d)~~ (a)(4)."

(4) "Title IV" shall be replaced by "K.S.A. 49-428 and amendments thereto."

(Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2,

1997; amended P- _____.)

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KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise ~~indicated~~ specified in this regulation:

(1) Scope, 30 CFR 702.1;

(2) definitions, 30 CFR 702.5;

(3) ~~information collection, 30 CFR 702.10;~~

~~(4) application requirements and procedures, 30 CFR 702.11, except that subsection (b)~~
shall be deleted. The text "after April 1, 1990, under a Federal program or on Indian lands, or
after the effective date of counterpart provisions in a state program" shall be replaced by "under
the state act";

~~(5) (4) contents of application for exemption, 30 CFR 702.12;~~

~~(6) (5) public availability of information, 30 CFR 702.13;~~

~~(7) (6) requirements for exemption, 30 CFR 702.14;~~

~~(8) (7) conditions of exemption and right of inspection and entry, 30 CFR 702.15.~~

However, "\$ 702.11(b) or" and "for Federal programs and on Indian lands or in accordance with
counterpart provisions when included in State programs" shall be deleted;

~~(9) (8) stockpiling of minerals, 30 CFR 702.16;~~

~~(10)~~ (9) revocation and enforcement, 30 CFR 702.17; and

~~(11)~~ (10) reporting requirements, 30 CFR 702.18.

(b) The following phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-6-10 (a)~~ in this regulation:

(1) "Act" shall be replaced by "state act."

(2) ~~"This chapter"~~ shall be replaced by ~~"these regulations."~~

~~(3) "43 CFR 4.1280" shall be replaced by "K.A.R. 47-4-14a."~~

~~(4)~~ "[S]ection 701(28) of the act" shall be replaced by "K.S.A. 49-431, and amendments thereto."

(3) "§ 702.18 of this part" and "§ 702.18" shall be replaced by "K.A.R. 47-6-10 (a)(10)."

(4) "§ 702.16" shall be replaced by "K.A.R. 47-6-10 (a)(8)."

(5) "§ 702.12(g)" shall be replaced by "K.A.R. 47-6-10 (a)(4)."

(6) The following text shall be replaced by "K.A.R. 47-4-14a": "43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority" and "43 CFR 4.1280 or under corresponding State procedures."

(7) "§ 702.11(e)(3)" shall be replaced by "K.A.R. 47-6-10 (a)(3)."

(8) "Secretary" shall be replaced by "secretary, Kansas department of health and environment."

(9) "§ 702.5 of this part" shall be replaced by "K.A.R. 47-6-10 (a)(2)." (Authorized by

and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended

P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

NEW PERMANENT REGULATION

ARTICLE 6 - PERMIT REVIEW

47-6-11. Post-permit issuance requirements; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2001, are adopted by reference, except as otherwise indicated in these regulations:

(1) Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information, 30 CFR 774.11; and

(2) post-permit issuance information requirements for permittees, 30 CFR 774.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted in this regulation:

(1) "[R]egulatory authority" shall be replaced by "Kansas department of health and environment."

(2) "[P]art 843, 846, or 847 of this chapter" shall be replaced by "K.A.R. 47-15-1a, K.A.R. 47-5-5a (a)(10) through (13), and K.A.R. 47-5-17."

(3) "[S]ection 510 (c) of the Act" shall be replaced by "K.S.A. 49-407 (b), and amendments thereto."

(4) "§§ 773.12 (a) and (b) of this subchapter" shall be replaced by "K.A.R. 47-3-42 (a)(52)."

(5) "43 CFR 4.1350 through 4.1356" shall be replaced by "article 4 of these regulations."

(6) “§ 778.11 (c)(5) of this subchapter,” “§ 778.11 (d) of this subchapter,” “§ 778.11 of this subchapter,” “§ 778.11 (c) or (d) of this subchapter,” and “§ 778.11(e) of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(2).”

(7) “§§ 773.25, 773.26 and 773.27 of this subchapter” shall be replaced by “K.A.R. 47-3-42 (a)(61), (62), and (63).”

(8) “§ 843.11” shall be replaced by “K.A.R. 47-15-1a (a)(8).” (Authorized by and implementing K.S.A. 49-405; effective P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 7 - COAL EXPLORATION

47-7-2. Coal exploration; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

- (1) Notice requirements for exploration removing 250 tons of coal or less, 30 CFR 772.11;
- (2) permit requirements for exploration removing more than 250 tons of coal or occurring on lands designated as unsuitable for surface coal mining operations, 30 CFR 772.12;
- (3) coal exploration compliance duties, 30 CFR 772.13;
- (4) commercial use or sale, 30 CFR 772.14; and
- (5) public availability of information, 30 CFR 772.15.

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-7-2 (a)~~ in this regulation.

- (1) "[P]art 815 of this chapter" shall be replaced by "K.A.R. 47-9-1 (b)."
- (2) ~~"This chapter"~~ shall be replaced by ~~"these regulations."~~
- ~~(3)~~ "[S]ubchapter F of this chapter" shall be replaced by "article 12 of ~~chapter 47 of the~~ Kansas administrative these regulations."

~~(4)~~ (3) “[P]art 775 of this chapter” shall be replaced by “K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

~~(5)~~ “Section 518 of the act” shall be replaced by “K.S.A. 49-405c, and amendments thereto.”

~~(6)~~ “Subchapter L” shall be replaced by “articles 5 and 15 of chapter 47 of the Kansas administrative regulations.”

~~(7)~~ (4) “[P]arts 773 through 785 of this chapter” shall be replaced by “articles 3, 4, 6, and 10 of ~~chapter 47 of the Kansas administrative~~ these regulations, K.S.A. 49-407 (d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto.”

~~(8)~~ (5) “Section 518 of the act” and “subchapter L of this chapter” The phrase “section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program” shall be replaced by “K.S.A. 49-405c, and amendments thereto, and articles 5 and 15 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

~~(9)~~ (6) “[T]his part,” “this part, part 815 of this chapter, and the applicable provisions of the regulatory program,” and “this part, part 815 of this chapter, the regulatory program” shall be replaced by “K.A.R. 47-7-2.”

(7) “§ 761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(2).”

(8) “§ 772.12” shall be replaced by “K.A.R. 47-7-2 (a)(2).”

(9) “§ 772.13” shall be replaced by “K.A.R. 47-7-2 (a)(3).”

(10) “§§ 772.13 and 772.14” shall be replaced by “K.A.R. 47-7-2 (a)(3) and (4).”

(11) “§§ 772.14(b) and 700.11(a)(5)” shall be replaced by “K.A.R. 47-7-2 (a)(4) and K.A.R. 47-6-8.” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended P-
_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 8 - BONDING PROCEDURES

47-8-9. Bonding procedures; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

- (1) Regulatory authority responsibilities, 30 CFR 800.4, deleting subsection (d);
- (2) definitions, 30 CFR 800.5, deleting subsection (c);
- (3) requirement to file a bond, 30 CFR 800.11, deleting subsection (e);
- (4) form of the performance bond, 30 CFR 800.12, deleting subsection (c);
- (5) period of liability, 30 CFR 800.13;
- (6) determination of bond amount, 30 CFR 800.14;
- (7) adjustment of amount, 30 CFR 800.15;
- (8) general terms and conditions of bond, 30 CFR 800.16;
- (9) bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 CFR 800.17;
- (10) surety bonds, 30 CFR 800.20;
- (11) collateral bonds, 30 CFR 800.21;
- (12) replacement of bonds, 30 CFR 800.30;
- (13) requirement to release performance bonds, 30 CFR 800.40;
- (14) forfeiture of bonds, 30 CFR 800.50; and

(15) terms and conditions for liability insurance, 30 CFR 800.60, deleting subsection (d).

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-8-9 (a).~~ in this regulation:

(1) "Act" shall be replaced by "state act."

(2) "[U]nder parts 780 and 784 of this chapter)" shall be replaced by "[under K.A.R. 47-3-42 (a)(17)(20) through (35)(38), inclusive, and K.A.R. 47-10-1]."

(3) "[T]his chapter" ~~or~~ and "subchapter G of this chapter" shall be replaced by "these regulations."

(4) "[T]his subchapter" shall be replaced by "article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations."

(5) "[S]ection 515 of the act" ~~or~~ and "section 515 (b)(10) of the act" shall be replaced by "K.S.A. 49-405a, K.S.A. 49-408 through K.S.A. 49-413, ~~inclusive,~~ K.S.A. 49-429, and amendments thereto, and the regulations promulgated thereunder."

(6) "[S]ubchapter K of this chapter" shall be replaced by "article 9 of ~~chapter 47 of the Kansas administrative~~ these regulations."

(7) "[S]ection 507 (b)(16) of the act" shall be replaced by "K.S.A. 49-407 (c), and amendments thereto."

(8) "[P]art 823 of this chapter" shall be replaced by "K.A.R. 47-9-1 (~~g~~)(f)."

(9) "[S]ection 513 (b) of the act" shall be replaced by "K.S.A. 49-407 (d), and

amendments thereto, and the regulations promulgated thereunder."

(10) "[A]pplication" shall be replaced by "complete and accurate application."

(11) "§ 800.14" shall be replaced by "K.A.R. 47-8-9 (a)(6)."

(12) "§ 800.15" shall be replaced by "K.A.R. 47-8-9 (a)(7)."

(13) "§ 800.16(e)(2)" shall be replaced by "K.A.R. 47-8-9 (a)(8)."

(14) "§ 800.40," "§ 800.40(c)(2)," "§ 800.40(f) and (h)," and "§ 800.40 (a)(2)" shall be replaced by "K.A.R. 47-8-9 (a)(13)."

(15) "§ 800.50" shall be replaced by "K.A.R. 47-8-9 (a)(14)."

(16) "§ 816.133 or § 817.133 of this chapter" and "§§ 816.133(c) and 817.133(c)" shall be replaced by "K.A.R. 47-9-1 (c)(45) or K.A.R. 47-9-1 (d)(43)."

(17) "§ 817.121(c) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(39)."

(18) "§ 800.60" shall be replaced by "K.A.R. 47-8-9 (a)(15)."

(19) "§ 800.21(f)" shall be replaced by "K.A.R. 47-8-9 (a)(11)."

(20) "§ 816.132 or § 817.132 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(44) or K.A.R. 47-9-1 (d)(42)."

(21) "§ 800.17(b)(3)" shall be replaced by "K.A.R. 47-8-9 (a)(9)."

(22) "§ 816.116 or § 817.116 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(42) or K.A.R. 47-9-1 (d)(38)."

(23) "§ 800.11(b)" shall be replaced by "K.A.R. 47-8-9 (a)(3)."

(24) "§§ 800.14 and 800.15" shall be replaced by "K.A.R. 47-8-9 (a)(6) and (7)."

(25) "§ 800.13" shall be replaced by "K.A.R. 47-8-9 (a)(5)." (Authorized by K.S.A.

49-405; implementing K.S.A. 49-406, 49-407, and 49-429; effective, E-81-30, Oct. 8, 1980;
effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991;
amended May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 9 - PERFORMANCE STANDARDS

47-9-1. Adoption by reference. ~~The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation.~~

(a) The following portions of the permanent program performance standards – general provisions, 30 CFR Part 810, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Objective, 30 CFR 810.2, except ~~“subchapter”~~ that in the first sentence, “Nation” shall be replaced by ~~“K.A.R. 47-9-1 (a)”~~ “state”;

(2) responsibility, 30 CFR 810.4, ~~delete~~ except that part “a” shall be deleted; and

(3) applicability, 30 CFR 810.11, ~~except “parts 815 through 828” shall be replaced by their counterpart in “K.A.R. 47-9-1”;~~

(4) ~~“Subchapter” shall be replaced by “K.A.R. 47-9-1 (a)”~~; and

(5) ~~“Every state program” and “the applicable regulatory program” shall be replaced by “the regulatory program.”~~

(b) The following portions of the permanent program performance standards – coal exploration, 30 CFR Part 815, as in effect on July 1, 2001, are hereby adopted by reference:

(1) Required documents, 30 CFR 815.13; and

(2) performance standards for coal exploration, 30 CFR 815.15.

(c) ~~Except as provided in subsection (d),~~ The following portions of the permanent

program standards – surface mining activities, 30 CFR Part 816, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Signs and markers, 30 CFR 816.11. A subsection (g) shall be added to 30 CFR 816.11 that reads as follows: “Increment boundary markers. As deemed ~~appropriate~~ necessary by the secretary or secretary’s designee to ensure the public health and safety, protect the environment, and ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406(h), and amendments thereto”;

(2) ~~“Subchapter” shall be replaced by “K.A.R. 47-9-1 (e)”;~~

~~(3)~~ casing and sealing of drilled holes: general requirements, 30 CFR 816.13;

~~(4)~~ (3) casing and sealing of drilled holes: temporary, 30 CFR 816.14;

~~(5)~~ (4) casing and sealing of drilled holes: permanent, 30 CFR 816.15;

~~(6)~~ (5) topsoil and subsoil, 30 CFR 816.22~~;~~. The first paragraph of subsection (d)(1) of 30 CFR 816.22 shall be replaced by the following:

“Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:”;

~~(7)~~ (6) hydrologic-balance protection, 30 CFR 816.41;

~~(8)~~ (7) hydrologic balance: water quality standards and effluent limitations, 30 CFR 816.42;

~~(9)~~ (8) diversions, 30 CFR 816.43;

- (10) (9) hydrologic balance: sediment control measures, 30 CFR 816.45;
- (11) (10) hydrologic balance: siltation structures, 30 CFR 816.46;
- (12) (11) hydrologic balance: discharge structures, 30 CFR 816.47;
- (13) (12) impoundments, 30 CFR 816.49;
- (14) (13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 816.56;
- (15) (14) hydrologic balance: stream buffer zones, 30 CFR 816.57;
- (16) (15) coal recovery, 30 CFR 816.59;
- (17) (16) use of explosives: general requirements, 30 CFR 816.61, ~~everything except the statement "all blasting operations shall be conducted under the direction of a certified blaster," shall be deleted from 30 CFR 816.61 (c)(1)~~ except that subsection (c)(1) shall be replaced by the following:
- "All blasting operations within the state shall be conducted under the direction of a certified blaster";
- (18) (17) use of explosives: preblasting survey, 30 CFR 816.62;
- (19) (18) use of explosives: blasting schedule, 30 CFR 816.64;
- (20) (19) use of explosives: blasting signs, warnings, and access control, 30 CFR 816.66;
- (21) (20) use of explosives: control of adverse effects, 30 CFR 816.67;
- (22) (21) use of explosives: records of blasting operations, 30 CFR 816.68;
- (23) (22) disposal of excess spoil: general requirements, 30 CFR 816.71, deleting the phrase "in accordance with § 816.73";

- ~~(24)~~ (23) disposal of excess spoil: preexisting benches, 30 CFR 816.74;
- ~~(25)~~ (24) protection of underground mining, 30 CFR 816.79;
- ~~(26)~~ (25) coal mine waste: general requirements, 30 CFR 816.81;
- ~~(27)~~ (26) coal mine waste: refuse piles, 30 CFR 816.83;
- ~~(28)~~ (27) coal mine waste: impounding structures, 30 CFR 816.84;
- ~~(29)~~ (28) coal mine waste: burning and burned waste utilization, 30 CFR 816.87;
- ~~(30)~~ (29) disposal of noncoal mine waste, 30 CFR 816.89;
- ~~(31)~~ (30) stabilization of surface areas, 30 CFR 816.95;
- ~~(32)~~ (31) protection of fish, wildlife, and related environmental values, 30 CFR 816.97;
- ~~(33)~~ (32) slides and other damage, 30 CFR 816.99;
- ~~(34)~~ (33) contemporaneous reclamation, 30 CFR 816.100;
- ~~(35)~~ (34) backfilling and grading: time and distance requirements, 30 CFR 816.101; This

section shall be replaced by the following text:

“(A) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

“(i) Contour mining. Within 60 days or 1,500 linear feet following coal removal;

“(ii) area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or

“(iii) other surface mining methods. In accordance with the schedule established by the department.

“(B) The time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area may be extended by the department if the permittee demonstrates, in accordance with K.A.R. 47-3-42 (a)~~(24)~~ (27), adopting by reference 30 CFR 780.18 (b)(3), that additional time is necessary”;

~~(36)~~ (35) backfilling and grading: general requirements, 30 CFR 816.102, deleting subsections (k)(3)(i) and (ii);

~~(37)~~ (36) backfilling and grading: thin overburden, 30 CFR 816.104;

~~(38)~~ (37) backfilling and grading: thick overburden, 30 CFR 816.105;

~~(39)~~ (38) backfilling and grading: previously mined area, 30 CFR 816.106;

~~(40)~~ (39) revegetation: general requirements, 30 CFR 816.111;

~~(41)~~ (40) revegetation: timing, 30 CFR 816.113;

~~(42)~~ (41) revegetation: mulching and other soil-stabilizing practices, 30 CFR 816.114;

~~(43)~~ (42) revegetation: standards for success, 30 CFR 816.116. A subsection (i) shall be added to 816.116(c)(4), and a subsection (3) shall be added to 816.116(a);

(A) Subsection (c)(4)(i) shall read as follows: “(i) The regulatory authority may allow 90 days after the issuance of a notice of violation for the repair of any rills or gullies, or both, that may occur. If the rills or gullies, or both, are repaired using normal husbandry practices, approved by the department in consultation with the state conservationist or his designated representative, and the repairs are approved by the department, the period of responsibility shall not be restarted. The normal husbandry practices used to repair gullies shall be approved in advance by the United States department of interior, office of surface mining reclamation and

enforcement. If the rills or gullies, or both, are not repaired and approved within 90 days, or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the department.”

(B) Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) the production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) all data shall be clearly identified as to the bond release management area that it represents.”;

~~(44)~~ (43) cessation of operations: temporary, 30 CFR 816.131;

~~(45)~~ (44) cessation of operations: permanent, 30 CFR 816.132;

~~(46)~~ (45) postmining land use, 30 CFR 816.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

~~(47)~~ (46) roads: general, 30 CFR 816.150;

~~(48)~~ (47) primary roads, 30 CFR 816.151;

~~(49)~~ (48) utility installations, 30 CFR 816.180;

~~(50)~~ (49) support facilities, 30 CFR 816.181; and

~~(51)~~ (50) interpretative rules related to general performance standards, 30 CFR 816.200.

~~(d) The following federal regulations shall be deleted entirely from 30 CFR Part 816:~~

~~(1) Disposal of excess spoil: valley fills/head of hollow fills, 30 CFR 816.72;~~

~~(2) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and~~

~~(3) backfilling and grading: steep slopes, 30 CFR 816.107.~~

~~(e)~~ (d) The following portions of the permanent program performance standards – underground mining activities, 30 CFR Part 817, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this subsection:

(1) Signs and markers, 30 CFR 817.11. A subsection (g) shall be added to 30 CFR 817.11 that shall read as follows: “Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406 (h), and amendments thereto”;

~~(2) “Subchapter” shall be replaced by “K.A.R. 47-9-1 (d)”;~~

~~(3)~~ casing and sealing of exposed underground openings: general requirements, 30 CFR 817.13;

~~(4)~~ (3) casing and sealing of underground openings: temporary, 30 CFR 817.14;

~~(5)~~ (4) casing and sealing of underground openings: permanent, 30 CFR 817.15;

~~(6)~~ (5) topsoil and subsoil, 30 CFR 817.22;

- (7) (6) hydrologic-balance protection, 30 CFR 817.41;
- (8) (7) hydrologic balance: water quality standards and effluent limitations, 30 CFR 817.42;
- (9) (8) diversions, 30 CFR 817.43;
- (10) (9) hydrologic balance: sediment control measures, 30 CFR 817.45;
- (11) (10) hydrologic balance: siltation structures, 30 CFR 817.46;
- (12) (11) hydrologic balance: discharge structures, 30 CFR 817.47;
- (13) (12) impoundments, 30 CFR 817.49;
- (14) (13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 817.56;
- (15) (14) hydrologic balance: stream buffer zone, 30 CFR 817.57;
- (16) (15) coal recovery, 30 CFR, 817.59;
- (17) (16) use of explosives: general requirements, 30 CFR 817.61, ~~everything except the statement "All blasting operations shall be conducted under the direction of a certified blaster," shall be deleted from 30 CFR 817.61 (c)(1) except that subsection (c)(1) of 30 CFR 817.61 shall be replaced by the following:~~
- "All blasting operations within the state shall be conducted under the direction of a certified blaster";
- (18) (17) use of explosives: preblasting survey, 30 CFR 817.62;
- (19) (18) use of explosives: general performance standards, 30 CFR 817.64;
- (20) (19) use of explosives: blasting signs, warnings, and access control, 30 CFR 817.66;

~~(21)~~ (20) use of explosives: control of adverse effects, 30 CFR 817.67;
~~(22)~~ (21) use of explosives: records of blasting operations, 30 CFR 817.68;
~~(23)~~ (22) disposal of excess spoil: general requirements, 30 CFR 817.71, deleting the
phrase "in accordance with § 817.73";

~~(24)~~ (23) disposal of excess spoil: preexisting benches, 30 CFR 817.74;
~~(25)~~ (24) coal mine waste: general requirements, 30 CFR 817.81;
~~(26)~~ (25) coal mine waste: refuse piles, 30 CFR 817.83;
~~(27)~~ (26) coal mine waste: impounding structures, 30 CFR 817.84;
~~(28)~~ (27) coal mine waste: burning and burn waste utilization, 30 CFR 817.87;
~~(29)~~ (28) disposal of noncoal mine wastes, 30 CFR 817.89;
~~(30)~~ (29) stabilization of surface areas, 30 CFR 817.95;
~~(31)~~ (30) protection of fish, wildlife, and related environmental values, 30 CFR 817.97;
~~(32)~~ (31) slides and other damage, 30 CFR 817.99;
~~(33)~~ (32) contemporaneous reclamation, 30 CFR 817.100;
~~(34)~~ (33) backfilling and grading: general requirements, 30 CFR 817.102, deleting
subsection (k)(1);

~~(35)~~ (34) backfilling and grading: previously mined areas, 30 CFR 817.106;
~~(36)~~ (35) revegetation: general requirements, 30 CFR 817.111;
~~(37)~~ (36) revegetation: timing, 30 CFR 817.113;
~~(38)~~ (37) revegetation: mulching and other soil-stabilizing practices, 30 CFR 817.114;
~~(39)~~ (38) revegetation: standards for success, 30 CFR 817.116. A subsection (3) shall be

added to 817.116 (a). Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) The production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) All data shall be clearly identified as to the bond release management area that it represents.”;

~~(40)~~ (39) subsidence control, 30 CFR 817.121, except that 30 CFR 817.121 (c)(4)(i)-(iv) shall be deleted;

~~(41)~~ (40) subsidence control: public notice, 30 CFR 817.122;

~~(42)~~ (41) cessation of operations: temporary, 30 CFR 817.131;

~~(43)~~ (42) cessation of operations: permanent, 30 CFR 817.132;

~~(44)~~ (43) postmining land use, 30 CFR 817.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

~~(45)~~ (44) roads: general, 30 CFR 817.150;

~~(46)~~ (45) primary roads, 30 CFR 817.151;

~~(47)~~ (46) utility installations, 30 CFR 817.180;

~~(48)~~ (47) support facilities, 30 CFR 817.181; and

~~(49)~~ (48) interpretative rules related to general performance standards, 30 CFR 817.200.

The phrase "Office of Surface Mining Reclamation and Enforcement" shall be replaced by

"Kansas department of health and environment."; ~~and~~

~~(50) the following federal regulations shall be deleted entirely:-~~

~~(A) Disposal of excess spoil: valley fills/head of hollow fills, 30 CFR 817.72;~~

~~(B) disposal of excess spoil: durable rock fills, 30 CFR 817.73; and~~

~~(C) backfilling and grading: steep slopes, 30 CFR 817.107.~~

~~(F)~~ (e) The following portions of the special permanent program performance standards –
auger mining, 30 CFR Part 819, as in effect on July 1, 2001, are hereby adopted by reference:

(1) Auger mining: general, 30 CFR 819.11;

(2) auger mining: coal recovery, 30 CFR 819.13;

(3) auger mining: hydrologic balance, 30 CFR 819.15;

(4) auger mining: subsidence protection, 30 CFR 819.17;

(5) auger mining: backfilling and grading, 30 CFR 819.19; and

(6) auger mining: protection of underground mining, 30 CFR 819.21.

~~(G)~~ (f) The following portions of the special permanent program performance standards –
operations on prime farmland, 30 CFR Part 823, as in effect on July 1, 2001, are hereby adopted
by reference and altered as specified in this subsection:

(1) Responsibilities, 30 CFR 823.4;

- (2) applicability, 30 CFR 823.11, deleting subsection (a);
- (3) soil removal and stockpiling, 30 CFR 823.12;
- (4) soil replacement, 30 CFR 823.14; and
- (5) revegetation and restoration of soil productivity, 30 CFR 823.15.

~~(h)~~ (g) The following portions of the permanent program performance standards – coal preparation plants not located within the permit area of a mine, 30 CFR Part 827, as in effect on July 1, 2001, are hereby adopted by reference:

- (1) General requirements, 30 CFR 827.11;
- (2) coal preparation plants: performance standards, 30 CFR 827.12; and
- (3) coal preparation plants: interim performance standards, 30 CFR 827.13.

~~(h)~~ (h) The following portions of the special permanent program performance standards – in situ processing, 30 CFR Part 828, as in effect on July 1, 2001, are hereby adopted by reference:

- (1) In situ processing: performance standards, 30 CFR 828.11; and
- (2) in situ processing: monitoring, 30 CFR 828.12.

~~(i)~~ (i) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated~~ terms phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-9-1~~ in this regulation:

- (1) ~~"Subchapter K "~~ shall be replaced by "K.A.R. 47-9-1."
- ~~(2) "Director" or "regional director"~~ shall be replaced by "secretary."

- (3) ~~“Subchapter G” shall be replaced by “these rules and regulations.”~~
- (4) (2) ~~“[S]ubchapter J of this chapter”~~ shall be replaced by “article 8 of chapter 47 of the Kansas administrative rules and these regulations.”
- (5) (3) ~~“[S]ubchapter B of this chapter”~~ shall be replaced by “K.A.R. 47-9-4.”
- (6) (4) ~~“This part” or “30 CFR Parts 816 through 828”~~ shall be replaced by “K.A.R. 47-9-1.”
- (7) (5) ~~“[T]his chapter,” “subchapter,” or “Subchapter C”~~ and ~~“this section”~~ shall be replaced by “these ~~rules and~~ regulations.”
- (8) (6) ~~“Part 816” and “part 816 of this chapter”~~ shall be replaced by “K.A.R. 47-9-1 (c).”
- (9) (7) ~~“Part 817,” “part 817 of this chapter,” and “30 CFR 817”~~ shall be replaced by “K.A.R. 47-9-1 ~~(e)~~(d).”
- (8) ~~“[E]very state program,” “every regulatory program,” and “the applicable regulatory program”~~ shall be replaced by “the regulatory program.”
- (9) “[P]art 815” shall be replaced by “K.A.R. 47-9-1 (b).”
- (10) “[P]arts 818 through 828” shall be replaced by “K.A.R. 47-9-1 (e) through (h).”
- (11) “§ 816.95 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(30).”
- (12) “§§ 816.150 (b) through (f), 816.180, and 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c) (46), (48), and (49).”
- (13) “§ 816.43 of this chapter” and “§ 816.43” shall be replaced by “K.A.R. 47-9-1 (c)(8).”
- (14) “§§ 816.13 through 816.15 of this chapter” and “§§ 816.13 to 816.15” shall be

replaced by “K.A.R. 47-9-1 (c)(2) through (4).”

(15) “§§ 816.41 through 816.49 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) through (12).”

(16) “§§ 816.41(b), 816.41(f), and 816.102(e) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) and (35).”

(17) “Parts 816 and 817” shall be replaced by “K.A.R. 47-9-1 (c) and (d).”

(18) “[P]art 816 or part 817” shall be replaced by “K.A.R. 47-9-1 (c) or (d).”

(19) “§ 816.57” shall be replaced by “K.A.R. 47-9-1 (c)(14).”

(20) “§ 816.22,” “§ 816.22 of this chapter,” “§ 816.22 of this part,” “§816.22(b) of this part,” “§816.22(e),” “30 CFR 816.22(e)(1)(i),” and “30 CFR 816.22(e)(1)(ii)” shall be replaced by “K.A.R. 47-9-1 (c)(5).”

(21) “§ 816.41 of this part,” “§ 816.41,” and “§ 816.41(i)” shall be replaced by “K.A.R. 47-9-1 (c)(6).”

(22) “§ 816.13” shall be replaced by “K.A.R. 47-9-1 (c)(2).”

(23) “§§ 816.111, 816.113, 816.114, and 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(39), (40), (41), and (42).”

(24) “§ 780.21(h) of this chapter,” “§ 780.21(i) of this chapter,” and “§ 780.21(j) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28).”

(25) “§§ 773.17(e) and 780.21(h) of this chapter” shall be replaced by “K.A.R. 47-6-6 (a) and K.A.R. 47-3-42 (a)(28).”

(26) “§§ 773.17(e) and 784.14(g) of this chapter” shall be replaced by “K.A.R. 47-6-6 (a)

and K.A.R. 47-10-1 (a)(2)(E)."

(27) "§ 774.13 of this chapter" and "30 CFR 774.13" shall be replaced by "K.A.R. 47-6-2."

(28) "§§ 780.21 and 780.22 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(28) and (29)."

(29) "§ 816.42" shall be replaced by "K.A.R. 47-9-1 (c)(7)."

(30) "§ 816.46" shall be replaced by "K.A.R. 47-9-1 (c)(10)."

(31) "§ 816.111" and "§ 816.111(b)" shall be replaced by "K.A.R. 47-9-1 (c)(39)."

(32) "§ 816.102," "§§ 816.102(c), (e) through (h), and (j)," "§§ 816.102(a)(2) through (j) of this part," and "§ 816.102(a) (1) and (2)" shall be replaced by "K.A.R. 47-9-1 (c)(35)."

(33) "§ 780.25 of this chapter," "§ 780.25(a) of this chapter," and "§ 780.25(c)(3)" shall be replaced by "K.A.R. 47-3-42 (a)(31)."

(34) "§ 816.49 of this chapter" and "§ 816.49(a)(9)" shall be replaced by "K.A.R. 47-9-1 (c)(12)."

(35) "§§ 816.111 through 816.116 of this chapter" and "§§ 816.111 through 816.116" shall be replaced by "K.A.R. 47-9-1 (c)(39) through (42)."

(36) "§ 816.84 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(27)."

(37) "§ 816.11" and "§ 816.11 of this chapter" shall be replaced by "K.A.R. 47-9-1 (c)(1)."

(38) "§ 816.64" shall be replaced by "K.A.R. 47-9-1 (c)(18)."

(39) "§ 816.67" and "§ 816.67(e)" shall be replaced by "K.A.R. 47-9-1 (c)(20)."

- (40) “§ 816.68(p)” shall be replaced by “K.A.R. 47-9-1 (c)(21).”
- (41) “§ 816.66(c)” shall be replaced by “K.A.R. 47-9-1 (c)(19).”
- (42) “§ 780.13 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(23).”
- (43) “§ 780.35(c) of this chapter” shall be replaced by “K.A.R. 47-3-42 (c)(36).”
- (44) “§ 816.83” shall be replaced by “K.A.R. 47-9-1 (c)(26).”
- (45) “§ 784.25 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(P).”
- (46) “§ 816.71” and “§ 816.71(f)(3)” shall be replaced by “K.A.R. 47-9-1 (c)(22).”
- (47) “§ 816.81” shall be replaced by “K.A.R. 47-9-1 (c)(25).”
- (48) “[T]his title” shall be replaced by “ the 30 CFR.”
- (49) “§ 785.18 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(41).”
- (50) “§§ 816.71 through 816.74,” “§§ 816.71 through 816.74 of this part” and “§§ 816.71 – 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(22) through (23).”
- (51) “§§ 816.81 and 816.83” shall be replaced by “K.A.R. 47-9-1 (c)(25) and (26).”
- (52) “§§ 816.49 and 816.56 ” and “§§ 816.49 and 816.56 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(12) and (13).”
- (53) “§816.105” shall be replaced by “K.A.R. 47-9-1 (c)(37).”
- (54) “§ 816.106” shall be replaced by “K.A.R. 47-9-1 (c)(38).”
- (55) “§§ 816.102 through 816.107 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(35) through (38).”
- (56) “[P]art 823 of this chapter” shall be replaced by “K.A.R. 47-9-1 (f).”
- (57) “§ 701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75 (b).”

(58) “§§ 816.41 through 816.43 and 816.57 of this chapter” and “§ 816.41 through 816.43 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) through (8) and (14).”

(59) “§§ 816.22 and 816.111 through 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5) and (39) through (42).”

(60) “[S]ection 816.150” shall be replaced by “K.A.R. 47-9-1 (c)(46).”

(61) “§ 780.37(c) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(37).”

(62) “§ 817.57” and “30 CFR 817.57” shall be replaced by “K.A.R. 47-9-1 (d)(14).”

(63) “§ 817.22,” “§ 817.22 of this chapter,” “§ 817.22 of this part,” and “§ 817.22(b)” shall be replaced by “K.A.R. 47-9-1 (d)(5).”

(64) “§ 817.41 of this part,” “§ 817.41,” “30 CFR 817.41,” “§ 817.41(h),” and “§ 817.41 (j)” shall be replaced by “K.A.R. 47-9-1 (d)(6).”

(65) “§ 817.13” shall be replaced by “K.A.R. 47-9-1 (d)(2).”

(66) “§§ 817.111, 817.113, 817.114, and 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(35), (36), (37), and (38).”

(67) “§ 784.14(g) of this chapter,” “§ 784.14(h) of this chapter,” and “§ 784.14(i) of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(E).”

(68) “§§ 817.13 and 817.15” shall be replaced by “K.A.R. 47-9-1 (d)(2) and (4).”

(69) “§§ 817.13 to 817.15” shall be replaced by “K.A.R. 47-9-1 (d)(2) to (4).”

(70) “§ 817.42” shall be replaced by “K.A.R. 47-9-1 (d)(7).”

(71) “§§ 780.21 and 784.14 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(28)”

and K.A.R. 47-10-1 (a)(2)(E)."

(72) "§§ 780.21 and 784.22 of this chapter" shall be replaced by "K.A.R. 47-3-42 (a)(28) and K.A.R. 47-10-1 (a)(2)(M)."

(73) "§ 817.46" shall be replaced by "K.A.R. 47-9-1 (d)(10)."

(74) "§ 817.111" and "§ 817.111(b)" shall be replaced by "K.A.R. 47-9-1 (d)(35)."

(75) "§ 817.102," "§ 817.102 (c), (e) through (h), and (j)," and "§ 817.102(a) (1) and (2)" shall be replaced by "K.A.R. 47-9-1 (d)(33)."

(76) "§ 784.16(a) of this chapter" and "§ 784.16(c)(3)" shall be replaced by "K.A.R. 47-10-1 (a)(2)(G)."

(77) "§ 817.49 of this chapter," "§ 817.49(a)(9)," and "§ 817.49(a) and (c)" shall be replaced by "K.A.R. 47-9-1 (d)(12)."

(78) "§§ 817.111 through 817.116 of this chapter" and "§§ 817.111 through 817.116" shall be replaced by "K.A.R. 47-9-1 (d)(35) through (38)."

(79) "§§ 817.22 and 817.111 through 817.116 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(5) and (35) through (38)."

(80) "§ 817.84 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(26)."

(81) "§ 817.43" shall be replaced by "K.A.R. 47-9-1 (d)(8)."

(82) "§ 817.11" shall be replaced by "K.A.R. 47-9-1 (d)(1)."

(83) "Sections 817.61–817.68" shall be replaced by "K.A.R. 47-9-1 (d)(16)–(21)."

(84) "§ 817.67" and "§ 817.67 (e)" shall be replaced by "K.A.R. 47-9-1 (d)(20)."

(85) "§ 817.68(p)" shall be replaced by "K.A.R. 47-9-1 (d)(21)."

(86) “§ 817.64(a)” shall be replaced by “K.A.R. 47-9-1 (d)(18).”

(87) “§ 817.66(c)” shall be replaced by “K.A.R. 47-9-1 (d)(19).”

(88) “§ 784.19 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(J).”

(89) “§ 817.83” shall be replaced by “K.A.R. 47-9-1 (d)(25).”

(90) “§ 817.71” and “§ 817.71(f)(3)” shall be replaced by “K.A.R. 47-9-1 (d)(22).”

(91) “§ 817.81” shall be replaced by “K.A.R. 47-9-1 (d)(24).”

(92) “§§ 817.71 through 817.74” and “§§ 817.71 through 817.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(22) and (23).”

(93) “§§ 817.81 and 817.83” shall be replaced by “K.A.R. 47-9-1 (d)(24) and (25).”

(94) “§§ 817.49 and 817.56” shall be replaced by “K.A.R. 47-9-1 (d)(12) and (13).”

(95) “§816.104” shall be replaced by “K.A.R. 47-9-1 (c)(36).”

(96) “§ 817.106” shall be replaced by “K.A.R. 47-9-1 (d)(34).”

(97) “§ 817.116” shall be replaced by “K.A.R. 47-9-1 (d)(38).”

(98) “§§ 817.102 through 817.107 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(33) and (34).”

(99) “§ 784.20 of this chapter” and “§ 784.20(a) of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(K).”

(100) “§ 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”

(101) “§§ 817.41 through 817.43 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(6) through (8) and (14).”

(102) “§ 817.150” shall be replaced by “K.A.R. 47-9-1 (d)(44).”

(103) “§ 784.24(c)” shall be replaced by “K.A.R. 47-10-1 (a)(2)(O).”

(104) “30 CFR 817.133” and “30 CFR 817.133(a)” shall be replaced by “K.A.R. 47-9-1 (d)(43).”

(105) “30 CFR 784.15(a)(2)” shall be replaced by “K.A.R. 47-10-1 (a)(2)(F).”

(106) “30 CFR part 773 and 775” shall be replaced by “K.A.R. 47-3-42 (a)(47) through (64), and K.S.A. 49-407 (d), 49-416a, 49-422a, and amendments thereto, and article 4 of these regulations.”

(107) “§ 816.59 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(15).”

(108) “§§ 816.41 and 816.42 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(6) and (7).”

(109) “§ 817.121 (a) and (c) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(39).”

(110) “§§ 816.102 and 816.104 through 816.106 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(35) and (36) through (38).”

(111) “§ 816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(24).”

(112) “§ 785.17 and subchapter J of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(40) and “article 8 of these regulations.”

(113) “§ 785.17(a) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(40).”

(114) “§ 823.14(b)” shall be replaced by “K.A.R. 47-9-1 (f)(4).”

(115) “§ 816.22 or § 817.22 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5) or K.A.R. 47-9-1 (d)(5).”

(116) “§ 823.12(c)(2)” and “§ 823.12(c)(1)” shall be replaced by “K.A.R. 47-9-1 (f)(3).”

(117) “§ 785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(43).”

(118) “§ 827.13 of this part” shall be replaced by “K.A.R. 47-9-1 (g)(3).”

(119) “§ 816.45 through 816.47 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(9) through (11).”

(120) “§§ 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(25), (26), (27), (28), (29), and (22) through (23).”

(121) “§ 816.97 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(31).”

(122) “§ 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(49).”

(123) “§§ 816.150 and 816.151 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(46) and (47).”

(124) “§§ 816.131 and 816.132 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(43) and (44).”

(125) “§§ 816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(5), (33), (35), (36), (38), (39), (40), (41), (42), and (45).”

(127) “§ 827.12” shall be replaced by “K.A.R. 47-9-1 (g)(2).”

(128) “30 CFR 785.22” shall be replaced by “K.A.R. 47-3-42 (a)(44).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-408, 49-409, 49-411, 49-413, 49-415, and 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981;

amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991;
amended May 2, 1997; amended July 31, 1998; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 9 - PERFORMANCE STANDARDS

47-9-4. Interim performance standards; adoption by reference. (a) The following regulations as in effect on July 1, ~~1995~~ 2001 are adopted by reference, except as indicated in this regulation:

(1) Definitions, 30 CFR 710.5, except that in subsection (2)(i), the word "Act" shall refer to the federal government's surface mining control and reclamation act;

(2) applicability, 30 CFR 710.11 (a), deleting subsection (a)(1) and the phrase "except as provided in § 710.12 of this part";

(3) signs and markers, 30 CFR 715.12;

(4) postmining use of land, 30 CFR 715.13, deleting the last sentence in (d);

(5) backfilling and grading, 30 CFR 715.14, deleting subsections (b)(3) and (c);

(6) disposal of excess spoil, 30 CFR 715.15, deleting subsection (c);

(7) topsoil handling, 30 CFR 715.16;

(8) protection of the hydrologic system, 30 CFR 715.17, deleting subsection (j);

(9) dams constructed of or impounding waste material, 30 CFR 715.18;

(10) revegetation, 30 CFR 715.20;

(11) interpretative rules related to general performance standards, 30 CFR 715.200; and

+ (12) prime farmland, 30 CFR 716.7.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the federal regulations

adopted by reference in this regulation:

(1) “[T]his part,” “~~section~~ § 716.2 of this chapter,” “part 715 of this chapter,” “this section,” ~~or~~ and “this chapter” shall be replaced by “these regulations.” ~~wherever they appear.~~

(2) “Act” shall be replaced by “state act.”

(3) “[S]ubchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(4) “Subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(5) “§ 715.17,” “§ 715.17 of this part,” “§ 715.17(a),” and “§ 715.17(c)” shall be replaced by “K.A.R. 47-9-4 (a)(8).”

(6) “§ 715.16,” “§ 715.16(c),” “§ 715.16(a)(4),” and “30 CFR 715.16(a)(4)(i)” shall be replaced by “K.A.R. 47-9-4 (a)(7).”

(7) “§ 715.13” shall be replaced by “K.A.R. 47-9-4 (a)(4).”

(8) “§ 715.20” and “§ 715.20(g)” shall be replaced by “K.A.R. 47-9-4 (a)(10).”

(9) “§ 715.14,” “§ 715.14(b)(2),” and “§ 715.14(j)” shall be replaced by “K.A.R. 47-9-4 (a)(5).”

(10) “§§ 715.14 and 715.20” shall be replaced by “K.A.R. 47-9-4 (a)(5) and (10).”

(11) “§ 715.12” shall be replaced by “K.A.R. 47-9-4 (a)(3).”

(12) “§§ 715.14, 715.16, and 715.20” shall be replaced by “K.A.R. 47-9-4 (a)(5), (7), and (10).”

(13) “§ 715.18” shall be replaced by “K.A.R. 47-9-4 (a)(9).”

(14) “§§ 715.13 and § 715.14” shall be replaced by “K.A.R. 47-9-4 (a)(4) and (5).”

(15) “§ 716.7” shall be replaced by “K.A.R. 47-9-4 (a)(12).”

(16) “§ 715.15 of this part” shall be replaced by “K.A.R. 47-9-4 (a)(6).”

(c) Each operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, that operator's request to adhere to an applicable permanent program performance standard or other applicable substantive regulation.

(Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended P- _____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 10 - UNDERGROUND MINING

47-10-1. Adoption by reference; underground mining. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

(1) Underground mining permit applications – minimum requirements for information on environmental resources, 30 CFR Part 783:

- (A) Responsibilities, 30 CFR 783.4;
- (B) general requirements, 30 CFR 783.11;
- (C) general environmental resources information, 30 CFR 783.12;
- (D) climatological information, 30 CFR 783.18;
- (E) vegetation information, 30 CFR 783.19;
- (F) soil resources information, 30 CFR 783.21;
- (G) maps: general requirements, 30 CFR 783.24; and
- (H) cross sections, maps, and plans, 30 CFR 783.25;

(2) underground mining permit applications – minimum requirements for reclamation and operation plan, 30 CFR Part 784:

- (A) Responsibilities, 30 CFR 784.4;
- (B) operation plan: general requirements, 30 CFR 784.11;
- (C) operation plan: existing structures, 30 CFR 784.12;

- (D) reclamation plan: general requirements, 30 CFR 784.13;
 - (E) hydrologic information, 30 CFR 784.14;
 - (F) reclamation plan: land use information, 30 CFR 784.15;
 - (G) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 784.16;
 - (H) protection of public parks and historic places, 30 CFR 784.17;
 - (I) relocation or use of public roads, 30 CFR 784.18;
 - (J) underground development waste, 30 CFR 784.19;
 - (K) subsidence control plan, 30 CFR 784.20, deleting the phrase “as described in § 817.121(c)(4) of this chapter”;
 - (L) fish and wildlife information, 30 CFR 784.21;
 - (M) geologic information, 30 CFR 784.22;
 - (N) operation plan: maps and plans, 30 CFR 784.23;
 - (O) road systems, 30 CFR 784.24;
 - (P) return of coal processing waste to abandoned underground workings, 30 CFR 784.25;
 - (Q) air pollution control plan, 30 CFR 784.26;
 - (R) diversions, 30 CFR 784.29;
 - (S) support facilities, 30 CFR 784.30; and
 - (T) interpretive rules related to general performance standards, 30 CFR 784.200.
- (b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~

phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-10-1 (a)~~ in this regulation:

(1) “[S]ubchapter K of this chapter” ~~or~~ and “subchapter K (Permanent Program Standards) of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(2) “[S]ubchapter B (Interim Program Standards) of this chapter” ~~or “subchapter B ”~~ shall be replaced by “K.A.R. 47-9-4.”

(3) “~~Section~~ [S]ections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 ~~to~~ through 49-413, ~~inclusive~~, and 49-429.”

(4) “[S]ubchapter J of this chapter” ~~or “subchapter J”~~ shall be replaced by “article 8 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

(5) “[T]his chapter,” “this section,” “subchapter,” and “this part” shall be replaced by “these regulations.”

(6) “30 CFR Parts 773 and 775” shall be replaced by “K.A.R. 47-3-42 (a)~~(42) to (46) and (48)~~ (46) through (64), inclusive, K.A.R. 47-6-6, K.S.A. 49-407 (d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of ~~chapter 47 of the Kansas administrative~~ these regulations.”

(7) “30 CFR 784.21” shall be replaced by “K.A.R. 47-10-1 (a)(2)(L).”

(8) “30 CFR 817.22,” “§ 817.22 of the chapter,” and “§ 817.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (d)(5).”

(9) “§ 817.133,” “30 CFR 817.133,” and “§ 817.133(a)” shall be replaced by “K.A.R.

47-9-1 (d)(43)."

(10) "30 CFR 784.13 through 784.26" shall be replaced by "K.A.R. 47-10-1 (a)(2)(D) through (Q)."

(11) "30 CFR 817.102 through 817.107" shall be replaced by "K.A.R. 47-9-1 (d)(33) and (34)."

(12) "30 CFR 817.111 through 817.116" shall be replaced by "K.A.R. 47-9-1 (d)(35) and (38)."

(13) "30 CFR 817.116" shall be replaced by "K.A.R. 47-9-1 (d)(38)."

(14) "30 CFR 817.59" shall be replaced by "K.A.R. 47-9-1 (d)(15)."

(15) "30 CFR 817.89 and 817.102" shall be replaced by "K.A.R. 47-9-1 (d)(28) and (33)."

(16) "30 CFR 817.13-817.15" shall be replaced by "K.A.R. 47-9-1 (d)(2) and (4)."

(17) "[P]art 817 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)."

(18) "§§ 817.41 to 817.43" shall be replaced by "K.A.R. 47-9-1 (d)(6) through (8)."

(19) "§§ 817.81 through 817.84 of this chapter" and "30 CFR 817.81 through 817.84" shall be replaced by "K.A.R. 47-9-1 (d)(24) through (26)."

(20) "§ 761.16 of this chapter" shall be replaced by "K.A.R. 47-12-4 (a)(6)."

(21) "§ 761.17(d) of this chapter" shall be replaced by "K.A.R. 47-12-4 (a)(7)."

(22) "§ 761.14 of this chapter" shall be replaced by "K.A.R. 47-12-4 (a)(4)."

(23) "30 CFR 817.71 through 817.74" shall be replaced by "K.A.R. 47-9-1 (d)(22) and (23)."

(24) "30 CFR 780.35" shall be replaced by "K.A.R. 47-3-42 (a)(36)."

(25) "§ 817.121(c) of this chapter" and "§ 817.121 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(39)."

(26) "§§ 817.41(j) and 817.121(c) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(6) and (39)."

(27) "§ 817.97 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(30)."

(28) "§ 784.20" shall be replaced by "K.A.R. 47-10-1 (a)(2)(K)."

(29) "§ 783.25 of this chapter" shall be replaced by "K.A.R. 47-10-1 (a)(1)(H)."

(30) "30 CFR 783.24 and 783.25" shall be replaced by "K.A.R. 47-10-1 (a)(1)(G) and (H)."

(31) "§ 784.15" and "§ 784.15(a)(2)" shall be replaced by "K.A.R. 47-10-1 (a)(2)(F)."

(32) "30 CFR 784.16" shall be replaced by "K.A.R. 47-10-1 (a)(2)(G)."

(33) "30 CFR 784.19" shall be replaced by "K.A.R. 47-10-1 (a)(2)(J)."

(34) "§§ 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c), 817.74(c), and 817.81(c) of this chapter" shall be replaced by "K.A.R. 47-10-1 (a)(2)(G) and (J), and K.A.R. 47-9-1 (d)(22), (23), and (24)."

(35) "§ 701.5 of this chapter" shall be replaced by "K.A.R. 47-2-75 (b)."

(36) "§ 817.150(d)(1) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(44)."

(37) "§ 817.151(c)(2) of this chapter," "§ 817.151(d)(5) of this chapter," "§ 817.151(d)(6) of this chapter," and "§ 817.151(b) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(45)."

(38) "30 CFR 817.81(f)" shall be replaced by "K.A.R. 47-9-1 (d)(24)."

(39) "30 CFR 817.95" shall be replaced by "K.A.R. 47-9-1 (d)(29)."

(40) "30 CFR 817.81(f)" shall be replaced by "K.A.R. 47-9-1 (d)(24)."

(41) "§ 817.43 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(8)."

(42) "§ 817.181 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(47)."

(43) "[P]art 784 of this chapter" shall be replaced by "K.A.R. 47-10-1 (a)(2)."

(44) "§ 774.13" shall be replaced by "K.A.R. 47-6-2."

(45) "§ 817.49 of this chapter" and "§ 817.49(a)(4)(ii) of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(12)."

(46) "§ 817.46 of this chapter" shall be replaced by "K.A.R. 47-9-1 (d)(10)."

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 11 - SMALL OPERATOR ASSISTANCE PROGRAM

47-11-8. Small operator assistance program; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

- (1) Definitions, 30 CFR 795.3;
- (2) eligibility for assistance, 30 CFR 795.6;
- (3) filing for assistance, 30 CFR 795.7;
- (4) application approval and notice, 30 CFR 795.8;
- (5) program services and data requirements, 30 CFR 795.9;
- (6) qualified laboratories, 30 CFR 795.10;
- (7) assistance funding, 30 CFR 795.11; and
- (8) applicant liability, 30 CFR 795.12.

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-11-8 (a)~~ in this regulation:

- (1) "Act" shall be replaced by "state act."
- (2) "[T]his chapter" and "this section" shall be replaced by "these regulations."
- (3) "This part" shall be replaced by "K.A.R. 47-11-8."

(4) “§ 795.9” and “§ 795.9(b)” shall be replaced by “K.A.R. 47-11-8 (a)(5).”

(5) “§ 795.10” shall be replaced by “K.A.R. 47-11-8 (a)(6).”

(6) “§ 795.6” shall be replaced by “K.A.R. 47-11-8 (a)(2).”

(7) “§§ 780.21(f), 784.14(e)” shall be replaced by “K.A.R. 47-3-42 (a)(28) and K.A.R. 47-10-1 (a)(2)(E).”

(8) “§§ 780.22(b) and 784.22(b)” shall be replaced by “K.A.R. 47-3-42 (a)(29) and K.A.R. 47-10-1 (a)(2)(M).”

(9) “§§ 779.25 and 783.25” shall be replaced by “K.A.R. 47-3-42 (a)(19) and K.A.R. 47-10-1 (a)(1)(H).”

(10) “§§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17” shall be replaced by “K.A.R. 47-3-42 (a)(14) and K.A.R. 47-10-1 (a)(1)(C) and K.A.R. 47-3-42 (a)(34) and K.A.R. 47-10-1 (a)(2)(H).”

(11) “§§ 780.16 and 784.21” shall be replaced by “K.A.R. 47-3-42 (a)(26) and K.A.R. 47-10-1 (a)(2)(L).”

(12) “§ 780.13” shall be replaced by “K.A.R. 47-3-42 (a)(23).”

(13) “§ 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(46).”

(14) “§§ 780.21, 780.22, 784.14, and 784.22” shall be replaced by “K.A.R. 47-3-42 (a)(28) and (29), and K.A.R. 47-10-1 (a)(2)(E) and (M).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 12 - LANDS UNSUITABLE FOR SURFACE MINING

47-12-4. Lands unsuitable for surface mining; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

(1) Definitions, 30 CFR 761.5, except that the statement “we, us, and our refer to the office of surface mining reclamation and enforcement” shall be replaced by “we, us, and our refer to the Kansas department of health and environment” and the phrase “or its State program counterpart” shall be deleted;

(2) areas where mining is prohibited or limited, 30 CFR 761.11, deleting subsection (b);

(3) procedures, 30 CFR 761.12, deleting subsection ~~(c)~~ (b);

(4) procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone for public roads, 30 CFR 761.14;

(5) procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling, 30 CFR 761.15;

(6) submission and processing of requests for valid existing rights determinations, 30 CFR 761.16;

(7) regulatory authority obligations at time of permit application review, 30 CFR 761.17;

(8) interpretive rule related to subsidence due to underground coal mining in areas

designated by act of congress, 30 CFR 761.200;

(9) definitions, 30 CFR 762.5;

~~(5)~~ (10) criteria for designating lands as unsuitable, 30 CFR 762.11;

~~(6)~~ (11) additional criteria, 30 CFR 762.12. "Secretary" shall mean the "secretary of the United States department of interior";

~~(7)~~ (12) land exempt from designation as unsuitable for surface coal mining operations, 30 CFR 762.13;

(13) applicability to lands designated as unsuitable by congress, 30 CFR 762.14;

~~(8)~~ (14) exploration on land designated as unsuitable for surface coal mining operations, 30 CFR ~~762.14~~ 762.15;

~~(9)~~ (15) petitions, 30 CFR 764.13;

~~(10)~~ (16) initial processing, recordkeeping, and notification requirements, 30 CFR 764.15;

~~(11)~~ (17) hearing requirements, 30 CFR 764.17;

~~(12)~~ (18) decision, 30 CFR 764.19;

~~(13)~~ (19) data base and inventory system requirements, 30 CFR 764.21;

~~(14)~~ (20) public information, 30 CFR 764.23; and

~~(15)~~ (21) regulatory authority responsibility for implementation, 30 CFR 764.25.

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference ~~under K.A.R. 47-12-4(a)~~ in this

regulation:

- (1) "~~Sections §§~~ 775.11 and 775.13 of this chapter" shall be replaced by "K.S.A. 49-407 (d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of ~~chapter 47 of the Kansas administrative~~ these regulations."
- (2) "[S]ections 522(a) (2) and (3) of the Act" shall be replaced by "K.S.A. 49-405b (a)(1) and (2), and amendments thereto."
- (3) "[T]his chapter" shall be replaced by "these regulations."
- (4) "[S]ection 526(e) of the Act and ~~Section §~~ 775.13 of this chapter" shall be replaced by "K.S.A. 49-422a and K.S.A. 49-426, and amendments thereto."
- (5) "[S]ection 522 of the Act" ~~or~~ and "section 522 (e) of the Act" shall be replaced by "K.S.A. 49-405b, and amendments thereto."
- (6) "[S]ection 701(28) of the act" shall be replaced by "K.S.A. 49-403~~(s)~~(r), and amendments thereto."
- (7) "[P]art 761, 762, or 764 of this chapter" shall be replaced by "K.A.R. 47-12-4."
- (8) "[P]art 772 of this chapter" shall be replaced by "K.A.R. 47-7-2."
- (9) "Act" shall be replaced by "state act."
- (10) "[T]his part" ~~or~~ and "this subchapter" shall be replaced by "K.A.R. 47-12-4."
- (11) "[S]ubchapter G of this chapter" shall be replaced by "K.A.R. 47-3-42, K.A.R. 47-6-2, K.A.R. 47-6-3, K.A.R. 47-6-4, and K.A.R. 47-7-2."
- (12) "30 U.S.C. 1272(e) and § 761.11" shall be replaced by "K.S.A. 49-405b and 49-406 (f), and amendments thereto and K.A.R. 47-12-4 (a)(2)."

(13) “§ 761.11 and 30 U.S.C. 1272(e)” shall be replaced by “ K.A.R. 47-12-4 (a)(2) and K.S.A. 49-405b and 49-406 (f), and amendments thereto.”

(14) “§ 761.11 or 30 U.S.C. 1272(e)” shall be replaced by “ K.A.R. 47-12-4 (a)(2) or K.S.A. 49-405b and 49-406 (f), and amendments thereto.”

(15) “30 U.S.C. 1272(e) or § 761.11” shall be replaced by “K.S.A. 49-405b and 49-406 (f), and amendments thereto or K.A.R. 47-12-4 (a)(2).”

(16) “[S]ection 701(28) of the Act and § 700.5 of this chapter” shall be replaced by “ K.S.A. 49-403(r), and amendments thereto and K.A.R. 47-2-75(a).”

(17) “§ 779.24(c) or § 783.24(c)” shall be replaced by “K.A.R. 47-3-42 (a)(18) or K.A.R. 47-10-1(a)(1)(G).”

(18) “§ 700.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(a).”

(19) “Federal Register” shall be replaced by “Kansas Register.”

(20) “§ 773.13(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(53).”

(21) “§ 840.14 or § 842.16 of this chapter” shall be replaced by “K.A.R. 47-15-1a (a)(2).”

(22) “§ 761.11,” “§ 761.11 of this chapter,” “§ 761.11(d)(1),” “§ 761.11(e)(2),” “§ 761.11(a) or (b),” “§ 761.11(c),” “§ 761.11(a),” and “§ 761.11(f) or (g)” shall be replaced by “K.A.R. 47-12-4 (a)(2).”

(23) “§ 761.12” shall be replaced by “K.A.R. 47-12-4 (a)(3).”

(24) “§ 761.16” shall be replaced by “K.A.R. 47-12-4 (a)(6).”

(25) “§ 761.17(d)” shall be replaced by “K.A.R. 47-12-4 (a)(7).”

(26) “§ 761.14” shall be replaced by “K.A.R. 47-12-4 (a)(4).”

(27) “§ 761.15” shall be replaced by “K.A.R. 47-12-4 (a)(5).”

(28) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(29) “§ 761.5” shall be replaced by “K.A.R. 47-12-4 (a)(1).”

(30) “§§ 761.13 through 761.15” shall be replaced by “K.A.R. 47-12-4 (a)(4) and (5).”

(31) “[P]arts 764 and 769 of this chapter shall be replaced by “K.A.R. 47-12-4 (a)(15) through (21).”

(32) “§ 762.11(b) of this chapter,” “§ 762.11(a) of this chapter,” and “§ 762.11 of this chapter” shall be replaced by “K.A.R. 47-12-4 (a)(10).”

(33) “§ 764.13 (b) or (c)” and “§ 764.13(a)” shall be replaced by “K.A.R. 47-12-4 (a)(15).”

(34) “§ 764.17” and “§ 764.17(e)” shall be replaced by “K.A.R. 47-12-4 (a)(17).”

(35) “§ 764.21” shall be replaced by “K.A.R. 47-12-4 (a)(19).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405b, 49-422a, and 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 13 - TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS
AND OPERATORS

47-13-4. Training and certification of blasters; adoption by reference. ~~(a) CFR part 850 as in effect on July 1, 1995 is adopted by reference, except as otherwise indicated in this regulation, and 30 CFR 850.10 and 850.12 shall be deleted.~~

(a) The following portions of the permanent program performance standards – standards for certification of blasters, CFR part 850, as in effect on July 1, 2001, are hereby adopted by reference and altered as specified in this regulation:

(1) Definitions, 30 CFR 850.5;

(2) training, 30 CFR 850.13;

(3) examination, 30 CFR 850.14, except that for the purposes of this section only, the term “regulatory authority” shall be replaced by “secretary-approved blaster training program director”; and

(4) certification, 30 CFR 850.15, except that for the purposes of 30 CFR 850.15(a) only, “regulatory authority” shall be replaced by “state fire marshal.”

(b) The following terms phrase and citation shall be replaced with the indicated terms phrase and citation specified in this subsection wherever they the phrase and citation appear: in the text of the federal regulations adopted by reference in this regulation:

(1) “Act” shall be replaced by “state act.”

~~(2) For the purposes of 30 CFR 850.15 (a) only, “regulatory authority” shall be replaced by “state fire marshal.”~~

~~(3) For the purposes of 30 CFR 850.14 only, “regulatory authority” shall be replaced by “secretary approved blaster training program director.”~~ “§ 850.13(b)” shall be replaced by “K.A.R. 47-13-4 (a)(2).”

(2) “[T]his part” shall be replaced by “these regulations.”

(c) The term “secretary-approved blaster training program director” ~~means~~ shall mean the person who is in charge of a given blaster training program that has been specifically approved by the secretary as being in accordance with the state act, these ~~rules and~~ regulations, and the state program. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended P-
_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

PROPOSED AMENDMENTS

ARTICLE 14 - EMPLOYEE FINANCIAL INTERESTS

47-14-7. Employee financial interest; adoption by reference. (a) The following federal regulations, as in effect on July 1, ~~1995~~ 2001, are adopted by reference, except as otherwise indicated in this regulation:

- (1) Responsibility, 30 CFR 705.4 (a) and (c), deleting subsection (b);
- (2) penalties, 30 CFR 705.6 (b), deleting subsection (a);
- (3) who shall file, 30 CFR 705.11 (a), (b), (c), and (d), deleting subsection (e);
- (4) when to file, 30 CFR 705.13;
- (5) where to file, 30 CFR 705.15;
- (6) what to report, 30 CFR 705.17;
- (7) gifts and gratuities, 30 CFR 705.18;
- (8) resolving prohibited interests, 30 CFR 705.19 (a), deleting subsection (b); and
- (9) appeals procedures, 30 CFR 705.21~~;~~

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

- (1) "Act" shall be replaced by the term "state act," except in 30 CFR 705.6(d), where the term "Act" shall mean "the surface mining control and reclamation act of 1977, Pub. L. 95-87."

(2) “Head of each State Regulatory Authority;” and “Head of the State Regulatory Authority” shall be replaced by the term “secretary of the Kansas department of health and environment.”

(3) “[T]his section” and “this part” shall be replaced by “these regulations.”

(4) “§ 705.11” and “§ 705.11 (b), (c), and (d)” shall be replaced by “K.A.R. 47-14-7 (a)(3).”

(5) “§ 705.13(a)” shall be replaced by “K.A.R. 47-14-7 (a)(4).”

(6) “§ 705.6(a)” shall be replaced by “K.S.A. 49-404.”

(7) “§ 705.19” shall be replaced by “K.A.R. 47-14-7 (a)(8).”

(8) “[S]ection 517(g) of the Act” and “section 517(g)” shall be replaced by “K.S.A. 49-404, and amendments thereto.” (Authorized by K.S.A. 49-404; implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 15 - INSPECTION AND ENFORCEMENT

47-15-1a. Inspection and enforcement; adoption by reference. (a) The following regulations as in effect on July 1, ~~1995~~ 2001 are adopted by reference, except as otherwise indicated in this regulation:

(1) Inspections by state regulatory authority, 30 CFR 840.11;

(2) availability of records, 30 CFR 840.14;

(3) definitions, 30 CFR 843.5;

(4) right of entry, 30 CFR 840.12;

(5) compliance conference, 30 CFR 840.16;

(6) review of adequacy and completeness of inspections, 30 CFR 842.14, except that the phrase "director or his or her designee" shall be replaced by "secretary or secretary's designee";

~~(6) (7) review of decision not to inspect or enforce, 30 CFR 842.15, except that the phrase in subsection (b) of 30 CFR 842.15, "or disclosure is required under the freedom of information act or other federal law," shall be deleted;~~

~~(7) (8) cessation orders, 30 CFR 843.11;~~

~~(8) (9) notices of violations, 30 CFR 843.12, except for the following:~~

(A) ~~The phrase~~ In subsection (a) of 30 CFR 843.12, the following phrase shall be deleted: "carried out during the enforcement of a federal program or federal lands program or

during federal enforcement of a state program under sections 504 (b) or 521 (b) of the act and part 733 of this chapter” ~~shall be deleted~~; and

(B) paragraph (a)(2) of 30 CFR 843.12 shall be deleted;

~~(9)~~ (10) suspension or revocation of permits: pattern of violations, 30 CFR 843.13, except that the phrase “or a federal lands program” in paragraph (a)(4)(i)(A) of 30 CFR 843.13, ~~“or a federal lands program,”~~ shall be deleted, and paragraphs (a)(4)(i)(B) and (C) of 30 CFR 843.13 shall be deleted;

(11) service of notices of violation, cessation orders, and show cause orders, 30 CFR 843.14, except that the phrase “Office of Surface Mining office” shall be replaced by “Kansas Department of Health and Environment office”;

~~(40)~~ (12) informal public hearings, 30 CFR 843.15. However, the following sentence in paragraph (e) shall be deleted: “Section 554 of title 5 of the United States code, regarding requirements for formal adjudicatory hearings, shall not govern public hearings”;

~~(44)~~ (13) formal review of citations, 30 CFR 843.16; and

~~(12) compliance conference inability to comply, 30 CFR 843.20; and~~

~~(13) compliance conference, 30 CFR 840.16.~~

(14) inability to comply, 30 CFR 843.18.

(b) The following ~~terms~~ phrases and citations shall be replaced with the ~~indicated terms~~ phrases and citations specified in this subsection wherever ~~they~~ the phrases and citations appear in the text of the federal regulations:

(1) “Act” shall be replaced by “state act.”

(2) “[T]his chapter,” “this part,” and “this section” shall be replaced by “these regulations.”

(3) “Federal” shall be replaced by “state.”

(4) “Office” shall be replaced by “secretary or secretary’s designee.”

(5) “~~Regional~~ [D]irector” shall be replaced by “secretary.”

(6) “43 CFR part 4” shall be replaced by “K.A.R. 47-4-14a.”

(7) “Office of hearings and appeals” shall be replaced by “department.”

(8) “30 CFR Part 845” and “part 845 of this chapter” shall be replaced by “article 5 of ~~chapter 47 of the Kansas administrative rules and~~ these regulations.”

(9) “43 CFR 4.1281” shall be replaced by “K.A.R. 47-4-14a (a)(1)-(8).”

(10) “[S]ection 521(a)(5) of the Act and § 843.15” shall be replaced by “K.S.A. 49-405 (m)(4), and amendments thereto and K.A.R. 47-15-1a (a)(12).”

(11) “[S]ection 521(a)(2) of the Act” shall be replaced by “K.S.A. 49-405 (m)(1), and amendments thereto.”

(12) “[S]ection 517 of the Act and § 842.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto.”

(13) “~~Section 518~~” shall be replaced by “~~K.S.A. 49-405c.~~”

(14) “~~Section 521~~” shall be replaced by “~~K.S.A. 49-405 (m).~~”

(15) “[S]ection 518(b), 521(a)(4), or 525 of the Act” shall be replaced by “K.S.A. 49-405c (b), K.S.A. 49-405 (m)(3), or K.S.A. 49-416a, and amendments thereto, respectively.”

(16) (14) “~~30 CFR 842.12~~” or “§ 842.12” shall be replaced by “K.A.R. 47-15-7 and

K.A.R. 47-15-8.”

~~(17)~~ (15) “[S]ection 520 of the Act” shall be replaced by “K.S.A. 49-426, and amendments thereto.”

~~(18)~~ (16) “[S]ection 525 of the Act” shall be replaced by “K.S.A. 49-416a, and amendments thereto.”

~~(19)~~ “30 CFR 842.11” or “section 842.11” shall be replaced by “K.A.R. 47-15-1a (a)(1).”

~~(20)~~ (17) “Director” shall be replaced by “secretary.”

~~(21)~~ (18) “30 CFR 843.15(e)” shall be replaced by the following: “An informal public hearing shall be conducted in accordance with K.A.R. 47-4-14a.”

(19) “§ 816.131(b) or § 817.131(b) of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(43) or (d)(41).”

(20) “§ 800.40 of this chapter” shall be replaced by “K.A.R. 47-8-9 (a)(13).”

(21) “[S]ection 518(e), 518(f), 521(a)(4), or 521(c) of the Act or their regulatory program counterparts” shall be replaced by “K.S.A. 49-405c (e) and (f) and K.S.A. 49-405 (m), and amendments thereto.”

(22) “§ 772.15 and 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-7-2 (a)(5) and K.A.R. 47-3-42 (a)(46).”

(23) “§ 843.12(a)” and “§ 843.12(c) and (f)” shall be replaced by “K.A.R. 47-15-1a (a)(9).”

(24) “§ 701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75 (b).”

(25) “§ 843.11” and “§ 843.11(b)” shall be replaced by “K.A.R. 47-15-1a (a)(8).”

(26) “§ 845.15(b)(2) of this chapter” shall be replaced by “K.A.R. 47-5-5a (a)(5).”

(27) “[R]ule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”

(28) “§ 843.13(c)” shall be replaced by “K.A.R. 47-15-1a (a)(10).”

(29) “[S]ection 517 of the Act and § 840.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto and K.A.R. 47-15-1a (a)(1).”

(30) “Freedom of Information Act or other Federal law” shall be replaced by “Kansas Open Records Act or other State law.”

(31) “§ 842.12” shall be replaced by “K.A.R. 47-15-8.”

(32) “§ 843.11 or § 843.12” shall be replaced by “K.A.R. 47-15-1a (a)(8) and (9).”

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-404, 49-405, 49-405c, 49-405d, 49-406, 49-416, 49-416a, and 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 16 - RECLAMATION

47-16-9. Contractor responsibility. (a) Each successful bidder for an abandoned ~~mine land~~ mined-land reclamation project contract shall be eligible under 30 CFR ~~773.15(b)(1)~~ 773.12 (a), as adopted by reference in K.A.R. 47-3-42 (a)(~~43~~) (52), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b) ~~For any contract to~~ Before any contract may be awarded to a bidder, bidder that bidder's eligibility shall be confirmed by the office of surface mining's automated applicant violator system. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended P-_____.)

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

AMENDED PERMANENT REGULATION

ARTICLE 16 - RECLAMATION

47-16-10. Exclusion of certain noncoal reclamation sites. (a) Money from the abandoned mined-land fund shall not be used for either of the following:

(1) The reclamation of sites and areas designated for remedial action pursuant to the uranium mill tailings radiation control act of 1978, 42 U.S.C. 7901 et seq. and amendments thereto; or

(2) sites listed for remedial action pursuant to the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601 et seq. and amendments thereto.

(b)(1) Each successful bidder for an abandoned mined-land contract for noncoal reclamation shall be eligible under 30 CFR ~~773.15(b)(1)~~ 773.12 (a), as adopted by reference in K.A.R. 47-3-42 (a)~~(43)~~ (52), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(2) Bidder eligibility shall be confirmed by the office of surface mining's automated applicant violator system for each contract to be awarded. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended P-_____.)

11/17/05

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

NEW PERMANENT REGULATION

ARTICLE 16 - RECLAMATION

47-16-12. Surface mining section's procedures for reclamation projects receiving less than 50 percent government funding. 30 CFR 874.17, as in effect on July 1, 2001, is adopted by reference, except that the following terms shall be replaced with the terms specified:

(a) "[P]art 707 of this chapter" and "the part 707 exemption or counterpart State/Indian Tribe laws and regulations" shall be replaced by "K.A.R. 47-6-9."

(b) "30 CFR subchapter R" shall be replaced by "Article 12 of these regulations."

(c) "Title V" and "Title V of SMCRA" shall be replaced by "K.S.A. 49-401 et seq."

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective P-_____.)